Supreme Court, U.S.
FILED
MAR 19 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87 1601

IN THE

Supreme Court of the United States

Supreme Court, U.S.
FILED
MAR 19 1988
JOSEPH F. SPANIOL, JR.
CLERK

October Term, 1987

WESLEY K. BELL, individually and d/b/a WES OUTDOOR ADVERTISING CO.,

Plaintiff-Appellant,

vs.

STATE OF NEW JERSEY, NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI and NICKOLAS MONTEFORTE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

APPENDIX TO JURISDICTIONAL STATEMENT

WESLEY K. BELL
Plaintiff-Appellant, Pro Se
P.O. Box 538
188 Route #72
Manahawkin, New Jersey 08050
(609) 597-3222 or (609) 597-0800

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TABLE OF CONTENTS OF APPENDIX.

	Page
Order of the Supreme Court of the United States ...	1a
Final Judgment February 19th, 1988 on Mortgage Foreclosure on Lot 26A Block 145.....	2a
D.O.T. Notices to Remove—Parcels #L3E1 & 2 and TLE-1G & 1H	5a
Complaint of the United States District Court	11a
Opinion Dated April 13th, 1987—New Jersey Superior Court Appellate Division.....	133a
Opinion Dated December 11th, 1987—New Jersey Superior Court Appellate Division.....	147a
Deed—Aker to Bell	151a
Deed—Cramer to Bell	155a
Deed—Cramer to Bell	159a
Deed—Steward to Bell	163a
Deed—Cramer to Bell	167a
Deed—Crane to Bell	171a
Lease—Brown to Bell	175a
Wheeler v. Roberts	177a
Deed Date Listing.....	183a
Permit Denials 1/18/68	185a
Hearing Schedule.....	188a
Permit Denials 1/30/68	189a
Refusal of Applications 7/29/68	190a
Permit Denials 10/15/68	192a
Notice of Removal 10/21/68	194a
Order to Remove Advertising Copy 10/28/68.....	196a
Permit Denials 10/30/68	198a
Hold in Abeyance	200a
Order to Remove Advertising Copy 11/26/68.....	201a
Applications Returned 12/5/68.....	202a
Notice of Intent to Condemn 12/5/68	204a
One of Group of Permit Denials 12/19/68.....	205a

Page

Notice of Intent to Expand Area of Takings 1/22/69 ..... 206a
Notice to Remove 2/25/69 ..... 207a
Request for Hearing 12/4/72 ..... 209a
Permit Denials 4/1/75 ..... 210a
Letter from Sterns, Herbert & Weinroth Re: Settlement Conference 212a
Informal Hearing 1/2/76 ..... 217a
Notice of Trespass and Removal 4/26/77 ..... 219a
Notice of Removal 11/8/77 ..... 221a
Notice of Hearing 1/10/78 ..... 223a
Content of Hearing 1/25/78 ..... 225a
Refusal to Present Witnesses 3/9/78 ..... 227a
Permit Re-Application 10/11/79 ..... 229a
Refusal to Accept Applications 231a
Statement of Ownership 11/28/79 from Clinton Cronin, Esquire 234a
Notice to Remove Copy 1/8/80 ..... 236a
Refusal to Accept Applications 2/5/80 ..... 237a
Report Showing "Blank Sign" 1/5/82 ..... 241a
Affidavit of Ownership 243a
Combined Communications Corp. v. City and County of Denver, Opinion of District Court, March 7, 1975 ..... 253a
Opinion of Supreme Court of Colorado, November 3, 1975 ..... 299a
Court Order, 45 Day Notice, May 29, 1969 ..... 313a
Order Dismissing D.O.T. and State No. 77-1531, Judge Barlow, December 12, 1977 ..... 316a
Oral Opinion No. 77-1531, Judge Barlow, March 6, 1978 ..... 317a
Order of Dismissal No. 77-1531, Judge Barlow, March 16, 1978 ..... 322a
Opinion of the Court, Third Circuit No. 78-1578, January 24, 1979 ..... 324a

Page

Denial—U.S. Supreme Court No. 78-1554, October 1, 1979 ..... 336a
Oral Opinion—Judge Ackerman April 25th, 1980 ... 337a
Partial Dismissal No. 80-531, Judge Ackerman, June 2, 1980 ..... 352a
Oral Opinion—Judge Thompson July 12th, 1982 ... 355a
Order, Lack of Jurisdiction No. 80-2109, July 29, 1981 ..... 365a
Order No. 80-531, Judge Thompson, December 21, 1982 ..... 366a
Opinion No. 80-531, Judge Thompson, December 21, 1982 ..... 368a
Order for Abandonment—Judge Thompson Parcel L-2R31D Dated July 20th, 1983 ..... 378a
Order No. 80-531, Judge Thompson, September 28, 1983 ..... 380a
Opinion No. 80-531, Judge Thompson, September 28, 1983 ..... 382a
State Police Report, September 30, 1983 ..... 401a
Order Denying Stay No. 80-531, October 6, 1983 ..... 403a
Order No. 83-5760, Third Circuit, June 15, 1984 .... 40[illegible]
Rehearing Denied No. 83-5760, July 24, 1984 ..... 408a
Opinion—Judge Thompson January 20th, 1987..... 409a
Order—Judge Thompson January 27th, 1987 ..... 422a
Order of Dismissal—U.S. Court of Appeals Third Circuit October 21, 1987 ..... 423a
Notice of Appeal November 3, 1987 ..... 425a
Notice of Appeal November 10, 1987 ..... 427a
Order for Extension January 7, 1987 U.S. Supreme Court 429a
Stafford Township Police Report, October 31, 1984 ..... 431a
News Article with Photo, November 1, 1984 ..... 433a

Page

Photos of Destruction, September 30, 1983 ..... 435a
Map of Southern Ocean County 439a
Letter, Re-Location Funds, November 4, 1970 ..... 440a
Letter Advising of Elimination, Parcel No. L-22B, June 15, 1972 ..... 441a
Letter Advising Parcel No. L-22B Has Been Deleted, February 9, 1973 ..... 442a
Letter Advising Order for Abandonment, Parcel L22B, June 11, 1974 ..... 444a
Loss of Advertising, Parcel #L2R-31D 446a
Public Law 91-646 ..... 449a
Relevant Portions of the United States Constitution 480a
Certificate of Possession—Removal 483a
National Adv. Co. v. The City of Orange, Fed. Dist. Court Order of 8-11-1986 ..... 485a
National Adv. Co. v. The City of Orange, 8-15-1986 Fed. Dist. Court Findings of Fact and Conclusions of Law 490a
National Adv. Co. v. The City of Orange, 9th Cir. Order of 10-6-86 ..... 496a
National Adv. Co. v. The City of Orange, Fed. Dist. Court Order Amended 3-27-87 ..... 498a
National Adv. Co. v. The City of Orange, 9th Cir. Pretrial Stay Order 4-2-87 ..... 501a

Order of the Supreme Court of the United States

SUPREME COURT OF THE UNITED STATES

No. 78-1554

WESLEY K. BELL,

Petitioner,

vs.

NEW JERSEY, *et al.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit, No. 78-1578.

On Consideration of the petition for a writ of certiorari herein to the United States Court of Appeals for the Third Circuit.

It is Ordered by this Court that the said petition be, and the same is hereby, denied.

June 4, 1979

A true copy MICHAEL RODAK, JR.
Test:
Clerk of the Supreme Court
of the United States
By Lawrence P. RILL
Deputy

Final Judgment February 19th, 1988 on Mortgage Foreclosure on Lot 26A Block 145

Filed
Henry H. Wiley
Judge
Superior Court
Feb 19 1988

BERRY, KAGAN, PRIVETERA
& SAHRADNIK
23rd Street and Long Beach Boulevard,
Spray Beach, NJ 08008
Mailing: BOX 249, Beach Haven, NJ 08008
609-492-4656
ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF NEW JERSEY
Chancery Division—Ocean County
Docket: F 4675-85

FIRST JERSEY NATIONAL BANK/South, formerly known as The Bank of New Jersey, N.A., a banking corporation of the United States of America,

Plaintiff,

vs.

WESLEY K. BELL and ANN M. BELL, his wife, *et als.*,

Defendants.

Civil Action

Final Judgment February 19th, 1988 on Mortgage Foreclosure on Lot 26A Block 145.

THIS MATTER having come before the Court and having been tried upon the merits, the Court having considered the testimony of various witnesses and the exhibits presented and for good cause showing and IT APPEARING that summons and complaint have been duly issued and returned served on all of the defendants except the State of New Jersey for whom notice and complaint has been duly acknowledged by the Attorney General; that default has been taken against all the defendants except Wesley K. Bell and Ann M. Bell, his wife, who have filed an Answer which does not dispute the priority of plaintiff's mortgage; and the plaintiff's Note and Mortgage having been presented and marked as Exhibits by the Court; and the various Exhibits of the defendants, Wesley K. Bell and Ann M. Bell, his wife, having been presented and marked as Exhibits by the Court;

AND IT APPEARING from the proofs and affidavits filed herein that there is due to the plaintiff the sum of $109,550.75 on its Mortgage described in the Complaint;

IT IS, on this 19th day of Feb., 1988 ORDERED AND ADJUDGED that the plaintiff is entitled to have the sum of $109,550.75 with lawful interest thereon from Feb. 1, 1988, together with costs of this suit to be taxed, with a counsel fee of $1,345.50 raised and paid out of the mortgaged premises described in the Complaint;

AND IT IS FURTHER ORDERED AND ADJUDGED that the counterclaims of defendants, Wesley K. Bell and Ann M. Bell, his wife, are hereby dismissed with prejudice.

Final Judgment February 19th, 1988 on Mortgage Foreclosure on Lot 26A Block 145.

AND IT IS FURTHER ORDERED AND ADJUDGED that so much of the said mortgaged premises as will be sufficient to raise and satisfy the said mortgage, interest and costs of the plaintiff be sold and that an execution do issue for that purpose out of this court directed to the Sheriff of Ocean County COMMANDING Him to make sale according to law of so much of the mortgaged premises as will be sufficient to satisfy the said mortgage, interest and costs of the plaintiff and that he pay out of the proceeds of sale to the plaintiff or its attorneys, its debt, interest and costs and that in case there is a surplus, the same shall be brought into this Court; and that the said Sheriff make his report to this Court of the sale as required by the rules of the Court.

AND IT IS FURTHER ORDERED AND ADJUDGED that the plaintiff duly recover against the said defendants, Wesley K. Bell and Ann M. Bell, his wife, or anyone holding under them, possession of the premises mentioned and described in the said Complaint with the appurtenances and that a Writ of Possession issue thereon.

AND IT IS FURTHER ORDERED AND ADJUDGED that all of the defendants to this action and each of them stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid under this Judgment.

HENRY H. WILEY, *J.S.C.*

D.O.T. Notices to Remove—Parcels #L3E1 & 2 and TLE-1G & 1H

(Seal) In Reply Please Refer To
Sign Encroachment
Removal Program

John C. Kohl
Commissioner

Route 72 C-34
Project No. CAF-000B-(2)

Date 3-16-74

STATE OF NEW JERSEY
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

RIGHT OF WAY DIVISION
Box 272, R.D. 4, Route U. S. 9
Freehold, New Jersey 07723

To: Wes Adv Co
Manahawkin NJ

Dear

As you probably recognize, signs and other obstructions which encroach on State Highway property tend to become traffic hazards and also to detract from the highway appearance. Legally, they also consist of a trespass.

It has been noted that a sign apparently erected by you, or on your behalf as follows, appears to be on State property without a permit and therefore is illegal.

s/s Rte 72 at Pole #P 365-43 Long Beach Island
(Sign Description and Location)
sign = (just painted-no adv.)

This is to notify you that your cooperation is requested in voluntarily removing this sign from State property.

D.O.T. Notices to Remove—Parcels #L3E1 & 2 and TLE-1G & H.

If it is not voluntarily removed within 14 days of the sending date of this letter, the sign will be removed by the State and stored for 30 days thereafter. Charges incurred by the State for such removal and storage will be considered your liability and may be billed to you. Further, this is to alert you that under the State's statutes the State may proceed either in the Superior Court for each day's violation to recover a fine not exceeding $100.00, and the costs of prosecution, or may prosecute the matter as a public nuisance in the local municipal Court wherein you would be subject to a penalty of $25.00 plus court costs upon conviction.

Your prompt assistance and cooperation in the overall public interest through removal of this sign by the 14-day expiration date will therefore be appreciated. If you have any questions, please call Robert Delaney, telephone 431-4500.

Existing R/W 130′ from Island (U-Turn)
Sign is in proposed R/W—Landscape = 1000′ set

Very truly yours,

J. WENZEK

DISTRIBUTION: Original to Owner;
Duplicate retained by patrol;
Triplicate to District Office;
Quadruplicate to Headquarters Office.

D.O.T. Notices to Remove—Parcels #L3E1 & 2 and TLE-1G & H.

(Seal) In Reply Please Refer To

Sign Encroachment
Removal Program

John C. Kohl
Commissioner

Route 72 C-35
Project No. CAF-000B-(2)

Date 3-16-74

STATE OF NEW JERSEY
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

To: Wes Outdoor Adv Co
Manahawkin NJ

Dear

As you probably recognize, signs and other obstructions which encroach on State Highway property tend to become traffic hazards and also to detract from the highway appearance. Legally, they also consist of a trespass.

It has been noted that a sign apparently erected by you, or on your behalf as follows, appears to be on State property without a permit and therefore is illegal.

s/s Rte 72 at Pole #P 365-45 Long Beach Island
(Sign Description and Location)
sign = Ship Bottom & Hands Dept. Stores etc

This is to notify you that your cooperation is requested in voluntarily removing this sign from State property.

If it is not voluntarily removed within 14 days of the sending date of this letter, the sign will be removed by the State and stored for 30 days thereafter. Charges

incurred by the State for such removal and storage will be considered your liability and may be billed to you. Further, this is to alert you that under the State's statutes the State may proceed either in the Superior Court for each day's violation to recover a fine not exceeding $100.00, and the costs of prosecution, or may prosecute the matter as a public nuisance in the local municipal Court wherein you would be subject to a penalty of $25.00 plus court costs upon conviction.

Your prompt assistance and cooperation in the overall public interest through removal of this sign by the 14-day expiration date will therefore be appreciated. If you have any questions, please call Robert Delaney, telephone 431-4500.

Sign is in proposed R/W line—1000' set.

Very truly yours,

J. WENZEK

DISTRIBUTION: Original to Owner;
Duplicate retained by patrol;
Triplicate to District Office;
Quadruplicate to Headquarters Office.

D.O.T. Notices to Remove—Parcels #L3E1 & 2 and TLE-1G & H.

(Seal) In Reply Please Refer To

Sign Encroachment
Removal Program
Route 72 C-36
Project No. CAF-000B-(2)

Date 3-16-74

John C. Kohl
Commissioner

To: Wes Outdoor Adv Co
Manahawkin NJ

Dear

As you probably recognize, signs and other obstructions which encroach on State Highway property tend to become traffic hazards and also to detract from the highway appearance. Legally, they also consist of a trespass.

It has been noted that a sign apparently erected by you, or on your behalf as follows, appears to be on State property without a permit and therefore is illegal.

s/s Rte 72 at Pole #36546
(Sign Description and Location)
sign = Hartovan's Amusement Park

This is to notify you that your cooperation is requested in voluntarily removing this sign from State property.

If it is not voluntarily removed within 14 days of the sending date of this letter, the sign will be removed by the State and stored for 30 days thereafter. Charges incurred by the State for such removal and storage will be considered your liability and may be billed to you. Further, this is to alert you that under the State's statutes the State may proceed either in the Superior

D.O.T. Notices to Remove—Parcels #L3E1 & 2 and TLE-1G & H.

Court for each day's violation to recover a fine not exceeding $100.00, and the costs of prosecution, or may prosecute the matter as a public nuisance in the local municipal Court wherein you would be subject to a penalty of $25.00 plus court costs upon conviction.

Your prompt assistance and cooperation in the overall public interest through removal of this sign by the 14-day expiration date will therefore be appreciated. If you have any questions, please call Robert Delaney, telephone 431-4500.

Sign is in Proposed R/W—1000' set.

Very truly yours,

J. WENZEK

DISTRIBUTION: Original to Owner;
Duplicate retained by patrol;
Triplicate to District Office;
Quadruplicate to Headquarters Office.

Complaint of the United States District Court

Original Filed
Apr 10 1986
Allyn Z. Lite, Clerk

IN THE UNITED STATES DISTRICT COURT
For the District of New Jersey

Civil Action
Complaint

WESLEY K. BELL, individually and T/A WES OUTDOOR ADVERTISING CO.,

Plaintiff,

vs.

STATE OF NEW JERSEY, NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI, NICKOLAS F. MONTEFORTE, and JOSEPH CUNNINGHAM,

Defendants.

Docket #86-1477 (AET)

DEMAND FOR A JURY TRIAL

Plaintiff, WESLEY K. BELL, individually and doing business as WES OUTDOOR ADVERTISING COMPANY, brings this civil action, seeking preliminary

and permanent injunctive relief, declaratory judgment, punitative and monetary damages, against the captioned defendants and complains and alleges, as follows:

PLAINTIFF

1. Plaintiff, WESLEY K. BELL, is an individual engaged in the Outdoor Advertising business, in the State of New Jersey, since 1957, residing at 188 Route #72, Manahawkin, New Jersey.

DEFENDANTS

2. Defendant, STATE OF NEW JERSEY, is a sovereign State of the United States, with its capital and its principal place of business located, for the purpose of service of process in the office of the Attorney General, at the Hughes Justice Complex, Trenton, New Jersey 08625.

3. Defendant NEW JERSEY DEPARTMENT OF TRANSPORTATION, has offices at 1035 Parkway Avenue, Trenton, New Jersey and is an agency of the State of New Jersey.

4. Defendant, RUSSELL H. MULLEN, is an employee of the New Jersey Department of Transportation and holds the title of Assistant Commissioner.

5. Defendant, CLARENCE PELL, is an employee of the New Jersey Department of Transportation.

6. Defendant, VINCENT R. STOLOWSKI, is a former employee of the State of New Jersey and now resides at 5 Sweet Briar Ln., Bordentown, New Jersey.

6. Defendant, NICKOLAS F. MONTEFORTE, is an employee of the State of New Jersey, as an Assistant Attorney General.

7. Defendant, JOSEPH CUNNINGHAM, is a former employee of the N.J. Dept. of Transportation and resides at 918 Schiller Ave., Trenton, New Jersey.

JURISDICTION

8. The acts of the Defendants, as set forth herein, constitute violations of:

(a) CIVIL RIGHTS ACT OF 1964, title VI section 601. section 602.

(b) Title 42 of the United States Code, Sections 1983, 1985(3) and 1986, and of the due process and equal protection provisions of the FIRST, FIFTH, THIRTEENTH, FOURTEENTH, FIFTEENTH Amendments and Article THREE, section two of the Constitution of the United States.

(c) PUBLIC LAW 89-285

(d) PUBLIC LAW 91-646

(e) PUBLIC LAW 93-643

(f) PUBLIC LAW 95-599

(g) Federal Laws and material relating to the Federal Highway Administration (exhibit #1).

(h) In Rem-jurisdiction in eminent domain proceedings under Rule 71A (see 7 Moore 71 d.10).

(i) Article 23 U.S.C. 131 to 134 amended 1978.

Article 28 U.S.C. 1257

Article 28 U.S.C. 1291

Article 28 U.S.C. 1331

Article 28 U.S.C. 1334

(j) The amount in controversy exclusive of interest and costs, exceeds ten thousand dollars ($10,000).

INTRODUCTION

9. Plaintiff is and has been, since April 1957, in the Outdoor Advertising business, in Ocean County, New Jersey. He has also run for public office and was elected, in his municipality of Stafford Township in 1969, 1972, 1977, 1980 and 1982 and has served his community as Mayor in 1972, 1973, 1975, 1980, 1981, 1982 and 1983.

10. The Department of Transportation, under direction of defendants, under color of law, have repeatedly violated Plaintiff's established rights in an effort to put him out of business and to confiscate his lands, which are not and were not needed for public purposes and acted under the delegated power, under a Federally funded program, in bad faith, wrongfully, corruptly and intentionally and said acts are capricious and injurious and beyond the privilege conferred by the statutes and the Constitution of the United States. Defendants and State employees were grossly negligent, to a point of recklessness or deliberate indifference. The purpose of the takings presents a Federal Question, Defendants acts against Plaintiff, present a Federal Question.

Defendants entered into a conspiracy to wrongfully condemn Plaintiff's lands and lands leased, where he maintained existing billboards and as a result of that conspiracy, defendants designated Plaintiff's sites as 'scenic'.

Defendants made Federal Funds available for their scenic condemnation of plaintiff's lands, for the sole purpose of putting plaintiff out of business.

In 1968, when Defendants first commenced conspiracy efforts against Plaintiff, his growing company maintained 128 billboards. As a direct result of Defendants acts, Plaintiff's company now has dwindled to only 58 billboards.

The Defendants, under color of State law, continue to act in a grossly negligent manner, to a point of recklessness or deliberate indifference and in a discriminatory manner, against Plaintiff and his business interests, without regard to his protected rights.

11. On February 14th, 1986 (Valentine's Day) Defendant New Jersey Department of Transportation employees entered onto Plaintiff's lands on Route #72, known as Lot 6, Block 33, in Barnegat Township. They proceeded to cut down, with chain saws, Plaintiff's billboards located thereon, which were duly licensed under State Permit #7098 (see exhibit #2).

Said illegal entry was without any right of legal access and was done intentionally, corruptly, and wrongfully and was done for the sole purpose of destroying plaintiff's billboards. Supervisory officials were grossly negligent, to the point of recklessness or deliberate indifference, as a continuing effort to put plaintiff out of business.

12. The New Jersey Department of Transportation, through its employees, on February 14th, 1986, entered onto Lot 1 Block 36 and Lot 10 Block 46, in Barnegat Township, on three sites and cut down and destroyed eleven creosoted utility-type poles and one complete

framework for a large 10 ft. x 48 ft. billboard. These billboards were erected in compliance with a perpetual lease, recorded in Book 2514 and Page 311 of the County of Ocean on August 26th, 1965, which is still in effect (see exhibit #3).

The aforementioned billboards were in the process of being removed by the Plaintiff, for use elsewhere, because the State of New Jersey purchased these lands with Federal Funding as a part of the National Pinelands Reserve.

Defendants have not paid Plaintiff, under Sections 122(a) and 122(b) of the Surface Transportation Assistance Act of 1978, amended sections 131(g) and (k) of Title 23, U.S.C. for the billboards and billboard structures removed thereon.

Defendants acts and the supervisory officials under their authority, were grossly negligent to a point of recklessness or deliberate indifference and their acts were done intentionally, corruptly, wrongfully and were done for the sole purpose of destroying plaintiff's billboards.

13. Defendant New Jersey Department of Transportation, through its employees, on September 30th, 1983, entered onto Lots 8 & 9, Block 120, in Stafford Township and cut down and removed billboards thereon, valued at $24,000.

Defendants, at the time of removal, had no right of access on Plaintiff's lands and they did so, over his objections and with the assistance of 'armed, uniformed State Police.' (see Police Report, exhibit #4).

Defendants acts were grossly negligent to a point of recklessness or deliberate indifference and were done as a part of a conspiracy to put plaintiff out of business.

Defendants again entered onto these same premises, on October 25th, 1984 and *again* attempted to remove reconstruction structures, after the previous removal (see Stafford Township Police report Exhibit #5, see notice to State, Exhibit #6, see news article of act, Exhibit #7).

Plaintiff has suffered loss of advertising revenue from the illegal removal of these structures, at the following rates:

Sept., 1983 to Sept. 1984	$10,400.
Sept. 1984 to Sept. 1985	$13,400.
Sept. 1985 to Sept. 1986	$14,800.
Sept. 1986 to Sept. 1987	$17,200.

In addition, plaintiff has suffered further legal expenses when Stafford Township instituted legal action, attempting to prevent Plaintiff from re-constructing these billboard structures, on this site (see Court Order dated March 14, 1986, exhibit #8).

14. Defendants VINCENT STOLOWSKI and the N.J.D.O.T. officials continually refused to grant Plaintiff his advertising permits to erect and maintain billboards on Lot 31 Block 147 (designated as site H on Map, exhibit #9), in Stafford Township, from January 1968 to October, 1983, for frivilous reasons and defendants and supervisory officials were grossly negligent to a point of recklessness or deliberate indifference, knowing full well, that the Department of Transportation did *not*, in fact, own the lands.

Defendant NICKOLAS MONTEFORTE intentionally, wrongfully, corruptly and repeatedly mis-represented the facts on this parcel, to the U.S. District Court Judge Anne Thompson, claiming that the Department of

Transportation was un-aware of Plaintiff's recorded easement and other pertinent facts, concerning the States' denial of Plaintiff's permit applications (see certification by Monteforte, exhibit #10; see false affidavit of Donald Catts, exhibit #11; and D.O.T. letters to owners, exhibits #12 and #13).

Plaintiff lost $88,300.00 in income, because of Defendants acts (see loss breakdown, exhibit #14).

Plaintiff was the purchaser, in possession of Lot 31 Block 147, from Gustav & Margaret Foster, on 12/26/68 and said agreement of purchase was recorded on Page _____ Book _____ of the Ocean County Records (see exhibit #15).

Because of Defendants attempted condemnation proceedings, refusal to issue advertising permits for this site and defendants penalty actions, Plaintiff was unable to complete the purchase of the property, and suffered extensive legal expenses. Sellers, on _____ 1971, filed suit against Plaintiff to cancel the contract of purchase, for failure to complete the transaction. As a result of the Fosters suit, Plaintiff assigned his $12,000 contract of purchase to Egon and Ede Kahl, Mike & Rita Ackaway and Harry & Reinelda Baldasarre, in exchange for a permanent easement on January 7th, 1972, Recorded February 7th, 1972, in Book 3187, Page 1 (see exhibit #16).

Plaintiff estimates the aforementioned property is presently valued at $300,000 and Plaintiff Wesley K. Bell has suffered the real estate asset loss of this site, of over $290,000 and extensive legal fees and expenses.

15. Defendants NEW JERSEY DEPARTMENT OF TRANSPORTATION, RUSSELL MULLEN and NICKOLAS MONTEFORTE, on September 30th, 1983,

wrongfully, corruptly intentionally and under color of law, caused Plaintiff's billboards to be cut down, destroyed, removed without notice or payment of compensation on Lot 8 Block 68; Lots 3, 4, 5, 6, 8 & 9, Block 120; Lot 27D, Block 144; Lot 9 Block 145B; Lots 10 & 37, Block 145A; Lots 26A Block 145; Lot 26A Block 145A; Lot 31 Block 147 and Lots 3 & 4, Block 298, in Stafford Township, in spite of the objection of the Plaintiff, for the purpose of putting plaintiff out of business. They are a total violation of Plaintiff's protected rights, guaranteed him by the U.S. Constitution and Federal Law. Said acts were grossly negligent to a point of recklessness or deliberate indifference to Plaintiff's protected rights.

16. Defendants VINCENT STOLOWSKI and the STATE OF NEW JERSEY cancelled Permit #APP5355, without notice or hearing and, in November, 1975, removed and destroyed billboards located on site #A, Lot 8, Block 68 in Stafford Township, without compensation, notice or hearings. Defendants and their employees were grossly negligent to a point of recklessness or deliberate indifference, and Defendants committed these acts wrongfully, corruptly intentionally and under color of law and continued a general pattern of conduct against Plaintiff, for the purpose of putting plaintiff out of business.

The Third Circuit Federal Court of Appeals, over the objections of the Defendants, approved the inclusion of all of these previously listed acts, in Plaintiff's last appeal. see June 15th, 1984 Third Circuit Order, Docket #83-5760).

Plaintiff appealed the decision to the Supreme Court of the United States and Defendants did not cross-appeal.

Plaintiff requested a re-hearing, which was denied on April 15th, 1985.

17. The NEW JERSEY DEPARTMENT OF TRANSPORTATION had previously entered onto this same group of lots, in 1967 and illegally removed similarly constructed billboards, without any right of access. The previous 1967 act had been declared illegal, by Chancery Division Judge Edward V. Martino (see Court Order, exhibit #17).

Plaintiff has continually opposed all of defendants acts and has continually maintained legal proceedings, challenging the Defendants condemnations and other acts, in an effort to vindicate Plaintiff's rights as well as to challenge Defendants illegal and improper actions.

18. Defendants, STATE OF NEW JERSEY, NEW JERSEY DEPARTMENT OF TRANSPORTATION, RUSSELL MULLEN AND JOSEPH CUNNINGHAM and their supervisor officials and employees did wrongfully, corruptly, intentionally and were grossly negligent to the point of recklessness or deliberate indifference and under color of law, caused Plaintiff's lands to be condemned for the sole purpose of preventing Plaintiff from making a living, in his billboard business.

Defendants did so, and caused Plaintiff's lands to be designated as 'scenic', to make the takings eligible for Federal Funds.

Defendants and their supervisory officials were clearly aware that the entire area was "Not Scenic" and that the area in question, was in fact zoned, used and developed as business.

Defendants wrongfully, corruptly, intentionally and under color of law, selected only this Plaintiff's interests, and left adjacent and similar properties untouched for condemnation. Defendants acts were grossly negligent to a point of recklessness or deliberate indifference.

Plaintiff has continually opposed the States right to 'select' his interests and properties (see WES OUTDOOR ADVERTISING CO. & WESLEY BELL v. DAVID GOLDBERG, L-12980-68PW, 55 N.J. 34 (1970)). The decision, in the last paragraph, says that Plaintiff may challenge "any abuse by the Commissioner of Transportation, through recourse through the courts".

Plaintiff has continually sought that recourse but it has never been granted by a trial on the merits or any other proceeding equivalent thereto.

Defendants selected the following parcels, owned by Plaintiff, for wrongful condemnation and are not needed for any public purpose:

Site A	Lot 8 Block 68	Exhibits #18 & 19
Site B	Lots 3,4,5,6,8,9 Block 120	Exhibits #20 & 21
Site C	Lot 27D Block 144	Exhibit #22
Site D	Lot 9, Block 145B	Exhibit #23
Site E	Lots 10 & 37 Block 145A	Exhibits #24 & 25
Site F	Lots 26A Block 145	Exhibits #26 & 27
Site G	Lot 26A Block 145A	Exhibit #28
Site H	Lot 31 Block 147	Exhibit #29
Site J	Lots 3 & 4, Block 298	Exhibits #30, 31, 32, & 33

19. Defendant CLARENCE PELL, executed a False Affidavit on or about 28th day of May, 1969 (See exhibit #34), wrongfully, corruptly and intentionally for the purpose of denying Plaintiff his pending

Constitutional right to challenge Defendants acts of discrimination, in selecting Plaintiff's properties and not those of adjacent property owners. Said acts were grossly negligent to a point of recklessness or deliberate indifference.

Said affidavit was falsified wrongfully, intentionally and corruptly for the sole purpose of putting plaintiff out of business and denying him his protected rights, guaranteed by the U.S. Constitution.

20. Defendants, NEW JERSEY DEPARTMENT OF TRANSPORTATION, RUSSELL H. MULLEN, JOSEPH CUNNINGHAM AND CLARENCE PELL caused the Department of Transportation maps to be "*altered*" in 1974, on Lots 3 & 4, Block 298, in Stafford Township, for the purpose of changing property lines, to force Plaintiff to remove three (3) large billboards, owned by the Plaintiff, without compensation, in violation of the U.S. Constitution and Federal Law.

Defendants have obtained a fraudulent deed, based on these illegal 'alterations', from the New Jersey Department of Conservation and Economic Development.

Plaintiff has continually opposed these acts for which he has never had a 'trial on the merits'.

21. On February 16, 1969, a conference was held by the Deputy Commissioner of Transportation, RUSSELL H. MULLEN, JOSEPH CUNNINGHAM and one Blauss (first name unknown), other employees of the State Department of Transportation, with members of the Stafford Township Government. During the course of the meeting, both Mullen and Cunningham agreed that

the proposed 'right-of-way' for beautification purposes could and should be limited to 60 feet rather than 100 ft. Nevertheless, they agreed to proceed with the condemnation proceedings to a depth of 100 feet. Mr. Mullen took the position that as soon as the problems with Plaintiff had been resolved, the condemnation proceeding would be amended to take only 60 feet rather than 100 feet, as shown on the plans. However, those statements were subsequently qualified by Cunningham and Mullen in that they said that the uses to which the property was to be put, the topography, etc., would be reviewed by the Commissioner. The meeting made it clear that property would have to be taken to greater depths until Bell was eliminated and his property taken, so that he could not erect signs. They would then take lesser depths of remaining properties so as not to prevent others from erecting signs close to the road.

Cunningham and Mullen also stated that the Department of Transportation was not committed to a 100 foot right-of-way, and in some instances, might agree to even less than 60 feet, if that was desirable, depending upon the size of the property. The conspiracy was intended to deprive Plaintiff of equal protection of the laws and to prefer Plaintiff's competitors and certain favored property owners. The conspiracy entered into, on that date, exists today (see Municipal records, copy of minutes, exhibit #35).

22. VINCENT STOLOWSKI, of the Department of Taxation, since 1968, has instituted proceedings against the Plaintiff and has continued to harass the Plaintiff for the purpose of denying his 5th Amendment rights to liberty and the lawful enjoyment of his property pursuant to the conspiracy among the defendants.

Stolowski falsely testified before the Ocean County Court, that there were no billboards, other than Plaintiff's, between Route #9 and Barnegat Bay. As a result of these proceedings, the State of New Jersey obtained a judgment against the Plaintiff, in excess of $59,000. A criminal case against Stolowski was, however, dismissed and the transcript of his original false testimony was stolen from the Prosecutors records. A copy has now been obtained, from Micro-film records.

23. Defendant, STATE OF NEW JERSEY's judgment, obtained by false testimony of Defendant VINCENT STOLOWSKI, referred to in count #21, caused Plaintiff to sell off property known as Lot 2, Block 114, in Barnegat Township, for a depressed figure, to satisfy the judgment and pay legal expenses associated therewith.

24. As further evidence of his malicious intent, VINCENT STOLOWSKI, in June of 1969, posted a photograph of the Plaintiff, on the Bulletin Board in the State House Annex Offices, with the caption, "Public Enemy Number One" affixed to it. A copy of the aforesaid picture is attached hereto, as Exhibit #36.

25. The STATE OF NEW JERSEY Department of Outdoor Advertising, on March 28, 1969, by letter of Vincent Stolowski, had ordered every sign and billboard owned by the Plaintiff, within the State of New Jersey, removed and advised that otherwise, they would be removed by the State of New Jersey, after the 30 day period. The State of New Jersey, again on February 5, 1976 ordered that all of the Plaintiff's signs in the State of New Jersey, be removed, or they would be summarily removed by the State of New Jersey on April 1, 1976

unless the Plaintiff paid the State certain monies. These actions were taken in violation of N.J.S.A. 54:40-70, in that the State failed to apply to the Superior Court of New Jersey for injunction relief against the alleged violations as required by New Jersey Law. The State's actions thereby deprived Plaintiff of due process of law, contrary to Plaintiff's rights under the New Jersey and United States Constitution.

26. The State of New Jersey has also removed Plaintiff's billboards located at (a) Sixth and Boulevard, Ship Bottom, N.J.; and (b) on Lot 10 Block 158 and Lot 2, Block 147, in Manahawkin, N.J., all without due process of law.

Subsequent to the removal of the Route #72 sign, on Lot 10, Block 158, the State sought the cost of the removal and in 1971, the Ocean County Court found that the sign did not violate State Statutes.

Defendants acts were grossly negligent to a point of recklessness or deliberate indifference and were a general pattern of conduct by Defendants and their agents, against Plaintiff.

27. Defendants wrongful, corrupt and intentional acts have caused Plaintiff to expend over thirty four thousand hours, since 1967, to the present date, opposing the Defendants condemnations, preparing defenses, meeting with attorneys, rebuilding destroyed billboards, salvaging destroyed billboards, defending other lawsuits which were caused as a spin-off of Defendants illegal acts.

Plaintiff also spent attorney fees and engineering fees, printing and court reporters fees, for those years, exceeding $200,000, as a result of Defendants illegal and wrongful acts.

28. Plaintiff requested assistance from Defendants, for re-location funds as provided in Federal Programs administered by the State in 1970.

As a result, Defendants agents responded on November 4th, 1970, that such funds were not available and that when they became available, Defendants would contact the Plaintiff (see November 4th, 1970 letter, exhibit #37).

Plaintiff is still waiting for Defendants response to that request, even though it was raised, in the previous appeal.

Defendants and supervisory officials for Defendants, were grossly negligent, to a point of recklessness or deliberate indifference, to violate Plaintiff's protected rights.

29. Plaintiff regularly supports and provides advertising space for affinity group causes, on these billboards, with idealogical messages, such as "Hanoi, Release Our POW/MIA's" (see exhibits #23 & #28); "Nobody Wants a Nuclear War, Vote Yes on Nuclear Freeze" (see exhibit #20); "Honor Our Flag—B.P.O. Elks"; "Knights of Columbus-Keep Christ in Christmas"; Plaintiff's local elections for Mayor and also County and State elections for the candidates of his choice.

Plaintiff contends that other forms of mass media are expensive for groups or persons of limited means. By destroying Plaintiff's billboards, Defendants are also destroying a direct means of reaching the public, for numerous groups who could not afford to get their message across, were it not for the 'good will' and support they receive from the Plaintiff.

30. Plaintiff has sustained damages and requests relief be awarded to his business, his property, other consequential damages and personal wealth, as follows:

(a) In excess of two million dollars, lost on billboard revenues,

(b) Legal expenses in excess of $200,000,

(c) Damages for signs illegally removed, in excess of $200,000,

(d) Damages to Plaintiff's business, personal and political reputation, in excess of one million dollars,

(e) Loss of real estate value of Lot 31, Block 147, in amount of two hundred and ninety thousand dollars ($290,000),

(f) Loss of time devoted to defending Plaintiff's rights and properties from illegal acts and wrongful condemnations, by Defendants, in the amount of $3,000,000, as pro se legal fees (attorney fees),

(g) Loss of ability to re-invest Plaintiff's income, over the past 18 years, said income being wrongfully, corruptly and intentionally withheld by Defendants acts, in excess of two hundred million dollars,

(h) Loss of twelve thousand five hundred dollars plus interest ($12,500+) collected by Defendants from Plaintiff's property closing (Cumberland Farms for Shopping Center site in Barnegat) to satisfy balance of wrongful judgment obtained through Defendant VINCENT STOLOWSKI'S FALSE TESTIMONY,

(i) Property loss, in excess of two hundred thousand dollars ($200,000) for depressed sale of shopping center site, to Cumberland Farms, in Barnegat, New Jersey, known as Lot 2, block 114. Proceeds were used to satisfy wrongful judgment and attorney fees obtained by Defendants,

(j) Setting aside and vacating all condemnations of property interests of Plaintiff, condemned by the STATE OF NEW JERSEY, along Route #72, in Stafford Township, New Jersey,

(k) Declaring that Federal Funds expended to condemn Plaintiff's properties were improperly expended and required that they be refunded to the United States Treasury,

(l) Enjoining the Defendants from harassment of the Plaintiff and his business,

(m) Awarding a reasonable attorney's fees and costs and expenses related to the preparation required to bring and sustain this action,

(n) Order payment of future loss of revenue, which Plaintiff would receive in his lifetime, from all removed billboards,

(o) Order payment of future loss of revenue, which Plaintiff's wife and stepchildren would receive, in their lifetime, from all removed billboards,

(p) and such other relief as may be appropriate.

WESLEY K. BELL, *Pro Se*
P.O. Box 538—188 Route #72
Manahawkin, New Jersey 08050
(609) 597-3222

EXHIBITS INDEX

EXHIBIT #

1. Federal regulations on highways and memorandum.
2. State permit, Route #72, Barnegat, N.J.
3. Dupar Lease
4. Police report (State) 8/30/83 (site B)
5. Police report (local) 10/25/84 (site B)
6. Notice to State (not to remove anything)
7. News article with photo (State Trooper) (site B)
8. Court Order (site G) March 14, 1986—Judge Kearney
9. Map Exhibit (sites A through H)
10. Certification by Monteforte
11. Affidavit by Donald Catts
12. Letter to property owner (site H)
13. Letter to property owner (site H)
14. Loss breakdown on site H
15. Fosters agreement of purchase (site H)
16. Easement on site H
17. 1968 Court Order (Judge Martino) (site B)
18. Photos of site A before destruction
19. Photos of site A after destruction 9/30/83
20. Photos of site B before destruction

21. Photos of site B, after destruction 9/30/83
22. Photos of site C before and after destruction 9/30/83
23. Photos of site D before destruction
24. Photos of site E after destruction 9/29/83
25. Photos of site E before destruction
26. Photos of site F before destruction
27. Photos of site F after destruction
28. Photos of site G before destruction
29. Photos of site H destruction prevented by Judge Thompson
30. Photo of site J in present condition
31. Photo of site J in present condition
32. Photo of site J in present condition
33. Photo of site J in present condition
34. Affidavit of Clarence Pell (all sites)
35. Municipal Minutes (conspiracy meeting—all sites)
36. Public Enemy #1 Photo
37. Letter on re-location funds (all sites)

Complaint of the United States District.

IN THE UNITED STATES DISTRICT COURT
For the District of New Jersey

Civil Action

WESLEY K. BELL, individually and
T/A WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY,
NEW JERSEY DEPARTMENT OF
TRANSPORTATION,
an agency of the State of New Jersey,
RUSSELL H. MULLEN,
CLARENCE PELL,
VINCENT R. STOLOWSKI,
NICKOLAS F. MONTEFORTE,
and JOSEPH CUNNINGHAM,
Defendants.

AFFIDAVIT

WESLEY K. BELL, being duly sworn according to law, deposes and says that he is the Plaintiff, in this matter and that the allegations contained in the

foregoing complaint are true and correct, to the best of his knowledge, information and belief.

WESLEY K. BELL
Wesley K. Bell

Sworn and subscribed before me, this 10th day of April, 1986.

GINA M. SIGNORELLI
Notary Public of New Jersey
My Commission Expires 10/5/86

EXHIBIT #1

Federal Laws and
Material Relating to
the Federal Highway
Administration
October 1983

(Logo)
U.S. Department
of Transportation

Federal Highway
Administration

Compiled by the
U.S. Department of Transportation
Federal Highway Administration

* * *

[II-65] signs shall conform to national standards to be promulgated by the Secretary.[130a]

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State Law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is

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[130a] Amended by sec. 122(a) of Public Law 94-280, May 5, 1976 (90 Stat. 438).

located, of the right to erect and maintain such signs, displays, and devices thereon.[130b]

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system.[130c]

(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and

[130b] Amended by sec. 109(c) of Public Law 93-643, Jan. 4, 1975 (88 Stat. 2284); and sec. 122(a) of Public Law 95-599, Nov. 6, 1978 (92 Stat. 2701).

[130c] Amended by sec. 122(c) of Public Law 94-280, May 5, 1976 (90 Stat. 439).

devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement: Provided, That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or

* * *

[II-306] marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

EFFECT UPON PROPERTY ACQUISITION

Sec. 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act.

TITLE II—UNIFORM RELOCATION ASSISTANCE

DECLARATION OF POLICY

Sec. 201. The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

MOVING AND RELATED EXPENSES

Sec. 202. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this Act, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would [II-307] have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not

being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

REPLACEMENT HOUSING FOR HOMEOWNER

Sec. 203. (a)(1) In addition to payments otherwise authorized by this title, the head of the Federal agency shall make an additional payment not in excess of $15,000 to any displaced persons who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payments shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a [II-308] decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of

employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including pre-paid expenses.

(2) The additional payment authorized by this subsection shall be made only to such displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

[11-309] REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

Sec. 204. In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 203(a)(1)(C)) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

RELOCATION ASSISTANCE ADVISORY SERVICES

Sec. 205. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this section, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

[II-310] (2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

Sec. 206. (a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 205(c)(3), is available to such person.

STATE REQUIRED TO FURNISH REAL PROPERTY INCIDENT TO FEDERAL ASSISTANCE (LOCAL COOPERATION)

Sec. 207. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has [II-311] made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

STATE ACTING AS AGENT FOR FEDERAL PROGRAM

Sec. 208. Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project.

PUBLIC WORKS PROGRAMS AND PROJECTS OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA AND OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Sec. 209. Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a

program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act.

REQUIREMENTS FOR RELOCATION PAYMENTS AND ASSISTANCE OF FEDERALLY ASSISTED PROGRAM; ASSURANCES OF AVAILABILITY OF HOUSING

Sec. 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

[II-312] (2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 205(c)(3).

FEDERAL SHARE OF COSTS

Sec. 211. (a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution, the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 206, 210, 215, and 305, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.

(b) No payment or assistance under section 210 or 305 shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305.

ADMINISTRATION—RELOCATION ASSISTANCE IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

Sec. 212. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, [II-313] 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

REGULATIONS AND PROCEDURES

Sec. 213. (a) In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this Act, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this Act, as he deems necessary or appropriate to carry out this Act.

ANNUAL REPORT

Sec. 214. The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this Act, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and [II-314] ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this Act assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants; (2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this Act, to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs; (3) the views of the Federal agency head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) any indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations.

PLANNING AND OTHER PRELIMINARY EXPENSES FOR ADDITIONAL HOUSING

Sec. 215. In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from

dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the [II-315] sum repaid shall be credited to the account from which such loan was made,

unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

PAYMENTS NOT TO BE CONSIDERED AS INCOME

Sec. 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

DISPLACEMENT BY CODE ENFORCEMENT, REHABILITATION, AND DEMOLITION PROGRAMS RECEIVING FEDERAL ASSISTANCE

Sec. 217. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this title, be deemed to have been displaced as the result of the acquisition of real property.

TRANSFERS OF SURPLUS PROPERTY

Sec. 218. The Administrator of General Services is authorized to transfer to a State agency for the purposes of providing replacement housing required by this title, any real property surplus to the needs of the United

States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

DISPLACEMENT BY A SPECIFIC PROGRAM

Sec. 219. Notwithstanding any other provision of this title, a person—

(1) who moves or discontinues his business, moves other personal property, or moves from his dwelling on or after January 1, 1969, and before the 90th day after the date of enactment of this Act as the result of the contemplated demolition of structures or the construction of improvements on real property acquired, in whole or in part, by a Federal agency within the area in New [II-316] York, New York, bounded by Lexington and Third Avenues and 31st and 32nd Streets; and

(2) who has lived on, or conducted a business on, such real property for at least one year prior to the date of enactment of this Act;

may be considered a displaced person for purposes of sections 202(a) and (b), 204, and 205 of this title, by the head of the agency acquiring the real property if—

(A) the head of the agency determines that such person has suffered undue hardship as the result of displacement from the real property; and

(B) the Federal Government acquired and held such property for at least five years prior to the date of enactment of this Act.

REPEALS

Sec. 220. (a) The following laws and parts of laws are hereby repealed:

(1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands acquired for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. 1231-1234).

(2) Paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473).

(3) Section 2680 of title 10, United States Code.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. 1606(b)).

(5) Section 114 of the Housing Act of 1949 (42 U.S.C. 1465).

(6) Paragraphs (7)(b)(iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415(8)), except the first sentence of paragraph (8).

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5-729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074).

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307).

(10) Chapter 5 of title 23, United States Code.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90-495).

(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section.

[II-317] EFFECTIVE DATE

Sec. 221. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State.

TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

(Secs. 301-305: 42 U.S.C., 4651-4655)

UNIFORM POLICY ON REAL PROPERTY ACQUISITION POLICY

Sec. 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in

determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the [II-318] real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

BUILDINGS, STRUCTURES, AND IMPROVEMENTS

Sec. 302. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

[II-319] (b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other

improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

EXPENSES INCIDENTAL TO TRANSFER OF TITLE TO UNITED STATES

Sec. 303. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall

reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

LITIGATION EXPENSES

Sec. 304. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse **[II-320]** such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the heard of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceedings.

REQUIREMENTS FOR UNIFORM LAND ACQUISITION POLICIES; PAYMENTS OF EXPENSES INCIDENTAL TO TRANSFER OF REAL PROPERTY TO STATE; PAYMENT OF LITIGATION EXPENSES IN CERTAIN CASES

Sec. 305. Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

REPEALS

Sec. 306. Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071-3073), section 35(a) of the Federal-Aid Highway Act of 1968 (23 U.S.C. 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section.

EXHIBIT #1-B

UNITED STATES GOVERNMENT
Department of Transportation
Federal Highway Administration

MEMORANDUM

Date: December 5, 1978
In reply refer to: HCC-40

Subject: INFORMATION: Just Compensation for Signs

From: Federal Highway Administrator

To: Regional Administrators
Regions 1-10 and 15

Sections 122(a) and 122(b) of the Surface Transportation Assistance Act of 1978 amended sections 131(g) and (k) of title 23, U.S.C. to read as follows:

> (g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law *and not permitted under subsection (c)* of *this section, whether or not removed pursuant to or because of this section.* The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:
>
> (A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and
>
> (B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.
>
> * * * * * * *

Exhibits.

(k) [Nothing] *Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing* in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

[New language is italicized, striken language is in brackets.]

These two amendments overrule an opinion on the subject of this memorandum by the Chief Counsel transmitted to your office by former Federal Highway Administrator Norbert T. Tiemann on December 8, 1976. Similarly affected are memorandums issued September 6, 1972 and December 13, 1974, dealing with ordinances in New Castle, Delaware and Madison, Wisconsin, on the above subject and withdrawn by the Chief Counsel in memorandums of June 20 and August 20, 1975. The statute requires the States to provide just compensation upon the removal of signs legally in existence on or after November 6, 1978, the effective date of the 1978 amendments, which do not conform to the definition found at 23 U.S.C. Section 131(c) if they wish to remain in compliance with the Highway Beautification Act. As of November 6, 1978, non-compliance with the compensation requirement will subject a State to the penalty provisions as provided by Title 23, Section 131(b).

Among other actions concerning the program is a proposed review of the entire outdoor advertising control program, including appropriate issuances in the Federal Register and public hearings. We anticipate sending out more specific guidance in this area in the very near future.

KARL S. BOWERS
Karl S. Bowers

EXHIBIT #2

State of New Jersey
DEPARTMENT OF TRANSPORTATION
OUTDOOR ADVERTISING
1985
007237
CONTROL NUMBER
DESCRIPTION OF LICENSED LOCATION
12.1 M
OCEAN
MANASQUAN TWP.
87101 05793 13 33 60.00 60.00 3

EXHIBIT #3

Book 2514 Page 311

ADVERTISING LEASE

This Agreement, made this 7th day of November 1962, by and between Wes Outdoor Adv. Co. as Tenant and Dupar Corp. as Landlord.

In consideration of the covenants herein set forth, the Landlord leases to the Tenant, so much of the plot of ground located in the Twp. of Union, County of Ocean and State of New Jersey, known and designated as Entire Frontage between Rt. 539 and the County Line as may be necessary for the construction of signs and sign structures and supports thereof measuring approximately 12 to 60 feet in length, with the right of the Tenant to maintain, erect, service and illuminate advertisements on such structures for a term of two year(s) from the date of erection at the annual rent of $600.00, or 1.00 per lineal sign foot payable in equal yearly installments, and the Landlord grants to the Tenant an option to renew this lease perpetually for a like period of time under the same terms and conditions and at the same rental with a like covenant for future renewals of the Lease. Said option to renew may be exercised by the Tenant by tendering to the Landlord the annual rent due.

The Landlord covenants not to permit any other form of advertising structures, advertisements, or bulletins on any other part of said premises and it is of the essence of this Agreement that the Landlord will not, under penalty of damages, lease or permit any sign or signs nearer than 300 feet of either end of the structures of the Tenant. The Landlord will not obstruct the view of the Tenants structures and grants to the Tenant, permission to

remove any obstruction to the view of the sign structures, and at the option of the Tenant to trim trees, shrubs, and other growth to keep the view of said signs unobstructed.

The parties hereto understand and agree that any equipment placed upon the land by the Tenant shall be and remain the property of the Tenant, and the same may be removed from the leased premises at any reasonable time after the expiration of this Lease or any renewal thereof.

The Landlord represents and warrants that he is the owner or agent of the premises described herein and that he or she has a full authority of the owner of said premises to make this Lease.

It is expressly understood that neither the Landlord nor the Tenant is bound by stipulations, representations, or agreements not printed or written in this Lease. This Lease shall enure to the benefit of and be binding upon the personal representatives, heirs, successors and assigns of the parties hereto.

This Lease is payable $200 during November and $400 during July of each year.

JODI GREEMAN (L.S.)
Landlord

WESLEY KENNETH BELL, PRES. (L.S.)
Tenant
Wes Outdoor Adv. Co.

STATE OF NEW JERSEY)

ss.:

COUNTY OF OCEAN)

BE IT REMEMBERED THAT IN THIS 7th day of November in the year of our Lord, One Thousand Nine Hundred and Sixty-two, before me, the undersigned, a Notary Public of New Jersey, personally appeared Wesley Kenneth Bell who I am satisfied is the Lessor mentioned in the within Lease, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed & delivered the same as & for his voluntary act and deed for the uses & purposes therein expressed.

JEANNE L. GERASIN
Notary Public (Seal)
A Notary Public of
New Jersey
My Commission Expires
Oct. 16, 1966

Return to—

"ADVERTISING SPECIALISTS"-
WES OUTDOOR ADV. CO.
Manahawkin, N.J.

P.O. Box 538 LYceum 7-2100

NEW JERSEY STATE POLICE

OPERATIONS REPOR

1. Station / [redacted]	2. Code	3. Incident	4. Date	5. Time	6. Case Number
Tuckerton	A12	Assist NJ DOT	9-30-83	8AM AM ☐ PM ☐	09-62R

7. Victim / [redacted]	7A. D.O.B.	7B. S.S. Number
State Of New Jersey		

8. Address	8A. Phone (Area Code)
Dept of Transportation	

9. Location of Incident (Street / Highway)	9A. Municipality	9B. County	9C. Mun. Code
SH #72 Stafford Twp	Manahawkin	Ocean	1530

10. VEHICLE INFORMATION	Make	Year	Body Type	Color	Registration	Vehicle Identification Number

11.

12.

13.

EXHIBIT #4

14. NARRATIVE

This date Sgt. F.Klimecke #1892 and Tpr.1 T. Braddock both of the Tuckerton Barracks were detailed by Capt. Charles J. Dalton, Troop "A" Commander to assist NJ DOT regarding the removal of illegally located billboard signs along both sides of SH #72.

Proceeded with Tpr. Braddock to the above location, met with Supervisor Donald Hendrickson, NJ DOT and along with John Netterman Supervisor of NJ DOT Highway and Roadside Use and their crew of men work commenced with the removal the above signs, Mayor of Stafford Twp., Wesley Bell also owner of WES OUTDOOR ADV. CO. had constructed at 7 different locations the billboards and same had been ordered removed by US District Court Judge Ann Thompson.

Wesley Bell arrived at the scene almost immediately with Stafford Twp Building Inspector Louis Raupp who posted on one of the billboards a work stoppage order, same being disregarded. Mr. Bell was advised that only an injunction from the court would be obeyed, the work continued. Bell attempted to get an injunction from the court but was unsuccessful.

It should be noted that no incidents or problems were encountered.

PHONE NUMBERS
Hendrickson-----597-2166
Netterman-------292-4247
Raupp-----------597-8271
Bell------------597-3222
Deputy AD Nicholas Monteforte.

15. Rank / Name (Print or Type)	16. Badge No.	17. Page	18. Date	19. Reviewed By	20. Pending	21. Complet
Sgt. F.Klimecke Signature F.Klimecke	1892	1 of 1 Pages	9-30-83	FK		XXX

S.P. 178 (3-81)

69a

EXHIBIT #4

STAFFORD TOWNSHIP POLICE DEPARTMENT

PRELIMINARY REPORT

1. Complaint No.	2. Mun. Code	3. Phone No.	4.
10918-84	1890	597-8581	2664

5. Crime/Incident	6. NJS
Property Dispute	

DATE AND TIME	7. Between	8. Hour	9. Day	10. Mo.	11. Date	12. Yr.
	At X	11:00	Th	10	25	84

13. Crime/Incident Location	14. Municipality	15. County	16. Code
area akjacent to Route 72 (South side), M.P.23.0	STAFFORD	OCEAN	1890

17. Type of Premise	18. Code	19. Weapons—Tools	20. Code
open country		N/A	

21. Prosecutor's Case Number	10918-84

22. Victim/s/ Accused	22a. Age	22b.
State of New Jersey, D.O.T., Wes Bell Sign Co.		

27. Victim/s/ Home Address — Phone

EXHIBIT #5

28. Employer

29. Person Reporting Crime/Incident	30. Date and Time
Wes Bell	10-25-84 11:00hr

31. Address	Phone
Route 72, Manahawkin, NJ	597-3222

32. Vehicle	34. Year	35. Make	36. Body Type	37. Color	38. Registration Number and State	39. Serial Number or Identification

40.	41. Jewelry	42. Furs	43.	44.	45.

46. Total Value Stolen	47. Total Value Recovered	48. Teletype Alarm	49. Technical Services	50. Technician—Agency	

51.	52.	53.	54.	55.	56.

57.	58.	59.	60.	61.	62.

List Accused — List and Identify Additional Victims — Describe Perpetrators or Suspects — Action Taken Include Findings and Observations of Investigator — Physical Evidence Found — Where By Whom — Disposition and Technical Services Performed — Interview of Victims — Witness — Persons Contacted — Accused Suspects — List — Describe Stolen Property — Value — Court Action — Attach Statements

63.	64. Juvenile	65. Race/Color	66. Sex/Date Born	67. UCR Status	68.
				Month 10 Year 84	

Name — Address — 69. Age — 70. Sex — 71. Race/Color

On Thursday, October 25, 1984, the undersigned officer was dispatched by Chief Larry D. Parker to Route 72 approximate milepost 23.0. This location has been the point of a dispute over ownership of the land on which approximately 12 telephone poles are located. These poles are erected so as to form a large "V" pointing toward Route 72. At this time, there is no advertising on the poles.

Upon my arrival, I observed several dump trucks, a front end loader and a large crane. All of these vehicles were owned by the New Jersey Department of Transportation. There were approximately 20 Department of Transportation employees present under the supervision of Mr. Robert Micai, Supervisor of Outdoor Advertising, Roadside Use and Highway Marking. Accompanying the D.O.T. employees was Sgt. D. Scalley, New Jersey State Police, assigned to the Tuckerton Barracks. Also present was Stafford Township Administrator Fred Smith.

It appears that the D.O.T. employees had intentions of removing the sign poles. Mr. Bel. objected to these intentions based on his contentions that he is the owner of the land on whic the poles are situated.

Mr. Micai produced several documents establishing ownership of the land by the state of New Jersey. Mr. Bell also porpduced documents dating back to the early 1960's establishing him as the rightful owner of the land.

In reviewing the states documents, there arose some descrepencies as to the exact locatio of the land in question. Due to these descrepencies, all parties agreed to curtail the planne removal of the sign poles pending further court action and/or an updated land survey.

BEST AVAILABLE COPY

71a EXHIBIT #5

Signature of Complainant

74. Name	75. Badge Number	77.	78. Date Report	79. Reviewed By
Officer Raymond M. Bohn	#1	Page 1 of 1 Pages	10-31-84	RMB/nsj
Signature Officer Raymond M. Bohn		80.	81.	82.

EXHIBIT #6

WES OUTDOOR ADV. CO.
Manahawkin, N.J.

Established 1957

P.O. Box 538 Zip 08050
609-597-3222

RECEIVED
FEB 25 1985
Assistant Attorney General
JAMES J. CIANCIA

February 25th., 1985

James J. Ciancia
Assistant Attorney General
Transportation Section
N.J. Dept. of Transportation
Hughes Justice Complex C.N. 112
Trenton, New Jersey 08625

Dear Mr. Ciancia:

~~(Attached is)~~ (W.B.) Upon receipt I will supply a copy of a survey completed by my engineer today, on Lot 8 Block 120, in Stafford Township.

Your designation of this parcel is #L22B.

This survey clearly shows that the billboard poles are *not* on State D.O.T. right-of-way.

This parcel and billboard were not at issue before Judge Thompson, when she made her decision on September 28th., 1983 (see Monteforte certification attached).

Your agency illegally removed the billboard at this site, in 1968 , and again on September 30th., 1983 and attempted again, for a third time, to remove the re-construction on October 25th., 1984.

Exhibits.

I have been informed that your agency has again scheduled this site for demolition on February 26th., 1985 (tomorrow) and I am informing you by service of this letter and attachments, that I own the lands in question and that the State has *"no rightful access"*.

Mr. William Anderson, senior engineer with the New Jersey Department of Transportation, is familiar with this parcel of land and is also familiar with the State's error in the actual locating of the property lines. Mr. Anderson worked on the original survey of this site for myself, when he was employed by Thomas J. Taylor, Engineers in the 1960's.

I suggest that you immediately correct your maps after the proper locating of this site.

The State chose not to defend their survey in the matter of Wes Outdoor Advertising Co. v. Ole Hansen & Sons v. N.J. D.O.T., Docket No. L-25351-68 and now, to re-assert their position is barred by res judicata and collateral estoppel and in fact, my most recent survey shows that the State is incorrect.

I do hope that your agency will discontinue these oppressive actions which have become evident over the years, resulting in needless court actions for both of us.

Sincerely,

WESLEY K. BELL
Wesley K. Bell t/a
WES OUTDOOR ADVERTISING CO.
P.O. Box 538 188 Route #72
Manahawkin, N.J. 08050
(609) 597-3222

WKB/ab
Encl.

cc: John Nettleton, N.J.D.O.T.

EXHIBIT #7
News Article with Photo, November 1, 1984

Page 1, Beacon, Thursday, November 1, 1984

Bell wins one in new billboard battle

Tract ownership is questioned and causes delay

By NEIL A. SHEEHAN
News Editor

MANAHAWKIN — It began almost the same way as a scene played out slightly more than a year ago but this time the results were different.

Early last Thursday morning, a state Department of Transportation work crew arrived at the site of a partially constructed billboard on Route 72 near the southbound exit to Route 9 and owned by former Stafford Township Mayor Wesley K. Bell.

Ordered by the state to remove pilings erected for the sign because they allegedly encroach on state property, the crew of about 15 brought with it a crane, several trucks and assorted equipment to perform the task. A State Police officer also accompanied the crew.

Bell, owner of the Wes Outdoor Advertising Co., arrived at the scene as the crew was about to begin work and convinced DOT supervisor John Nettleton and State Trooper David Scalley of the Tuckerton Barracks to wait until he could obtain proof that he owned the site and that the action was improper.

When Bell returned, he brought with him documents from his long-term legal battle with the state over the site. Bell argued that the order

Continued on page 6

Times-Beacon photo by Neil A. Sheehan

Former Stafford Mayor Wesley K. Bell, owner of Wes Outdoor Advertising, searches his records for deed to property on Route 72 to prevent state from removing billboard pilings, while State Police Sgt. David Scalley waits behind Bell.

Page 6, Beacon, Thursday, November 1, 1984

Billboard

Continued from page 1

the crew had to remove the sign was incorrect because the courts had not ruled on the property.

"You have no notice on this piece of property," Bell told the officials.

"This is what I agree with," Scalley responded, holding up the order.

"You're misintrepeting this," Bell challenged.

"This is my interpretation," Scalley said.

After examining more of Bell's papers and conferring with Nettleton, Scalley advised the crew to leave because it did not have enough proof to back up its order. He warned Bell, however, that the crew would return with a more specific order and someone familiar with the case.

"The issue is when we come back next time we're going to have the necessary paperwork to do the necessary work," Scalley said. "We'll also have someone who knows more about this case. As it stands right now, we don't have the order we need."

Township Administrator Fred Smith and Zoning Officer Martha Kremer also were present at the site.

In September 1983, a DOT crew cut down a sign that stood on the site along with 17 others after a U.S. District Court judge ruled that the state had acted properly when it took over the properties in 1970 as part of a highway beautification program.

Bell, insisting that the site at Route 72 and the southbound exit to Route 9 was not included in the court's ruling, began rebuilding it last spring.

Township officials charged that the construction was illegal and took Bell to court to halt work on the sign. A Superior Court judge ruled that no signs could be placed on the pilings until the matter was resolved.

BEST AVAILABLE COPY

EXHIBIT #8

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION—OCEAN COUNTY

WESLEY K. BELL, t/a WES OUTDOOR ADVERTISING CO.,

Plaintiff,

vs.

TOWNSHIP OF STAFFORD, a municipality in the County of Ocean, State of New Jersey, ROBERT H. MEARS, Construction Official of the Township of Stafford, and THE COUNTY OF OCEAN,

Defendants.

Docket No. L-048921-84 P.W.
CIVIL ACTION

ORDER FOR JUDGMENT

This matter having been brought before the Court upon the plaintiff, Wesley K. Bell, t/a Wes Outdoor Advertising Company, having filed a Verified Complaint in Lieu of Prerogative Writ against the Township of Stafford, Robert H. Mears, the Construction Official of the Township of Stafford and the County of Ocean; and Schuman & Butz, P.A. being substituted as attorneys for plaintiff in place of Sterns, Herbert & Weinroth, P.A.; and Gilmore & Monahan, P.A. having filed an Answer on behalf of the defendant the Township of Stafford and Robert H. Mears; and Berry, Kagan, Privetera & Sahradnik having filed an Answer on behalf of the

County of Ocean; it further appearing from the record that summary judgment was granted in favor of the defendant the County of Ocean and Robert H. Mears on Count 4 of the Complaint thus removing the defendant, the County of Ocean, as a party for trial; and this matter having been brought before the Court for trial and during the course of the trial, the plaintiff moved to amend the Complaint to challenge the validity of Ordinance 85-68 which ordinance was adopted during the pendancy of this action and subsequent to Ordinance 84-35 which was the subject matter of the Complaint; and the Court after considering the testimony of the witnesses presented at trial; and after considering the legal argument of counsel; and for good cause having been shown;

It is therefore on this 14 day of March, 1986, ORDERED as follows:

1. Ordinance No. 84-35 and Ordinance No. 85-68 are constitutionally valid Ordinances and legally adopted Ordinances.

2. The plaintiff may not re-erect a billboard on Lot 26A, Block 145A.

3. The plaintiff may re-erect a billboard previously removed from Block 120, Lot 8. This Court finds that the billboard was improperly removed by the New Jersey Department of Transportation and as such, the negligence and/or wrongdoing of the Department of Transportation, is imputed to the Township of Stafford and the Township of Stafford may not enforce its zoning ordinance prohibiting the erection of a billboard on that site.

4. The plaintiff may not repair the existing billboard upon Block 158A, Lots 114 and 119 by relocating thereon a billboard from Lot 3, Block 181.

5. The plaintiff, before erecting a billboard on Block 120, Lot 8, shall prepare the necessary application and submit the same to the Construction Code Official, Robert H. Mears, along with a copy of a site diagram showing the location of the billboard on the subject site.

6. The Order granting a Stay in this matter signed by the Honorable Henry H. Wiley, J.S.C. on the first day of August 1984 is hereby dissolved and the plaintiff is hereby ordered to remove the utility poles, billboard face and all portions of the billboards from Block 145A, Lot 26 no later than four weeks from the date of this Order. If the plaintiff fails to remove the same, then it may be removed by the defendant, the Township of Stafford's employees, and the costs thereof shall be paid by the plaintiff.

WILLIAM J. KEARNEY, *J.S.C.*
WJ KEARNEY

EXHIBIT #9

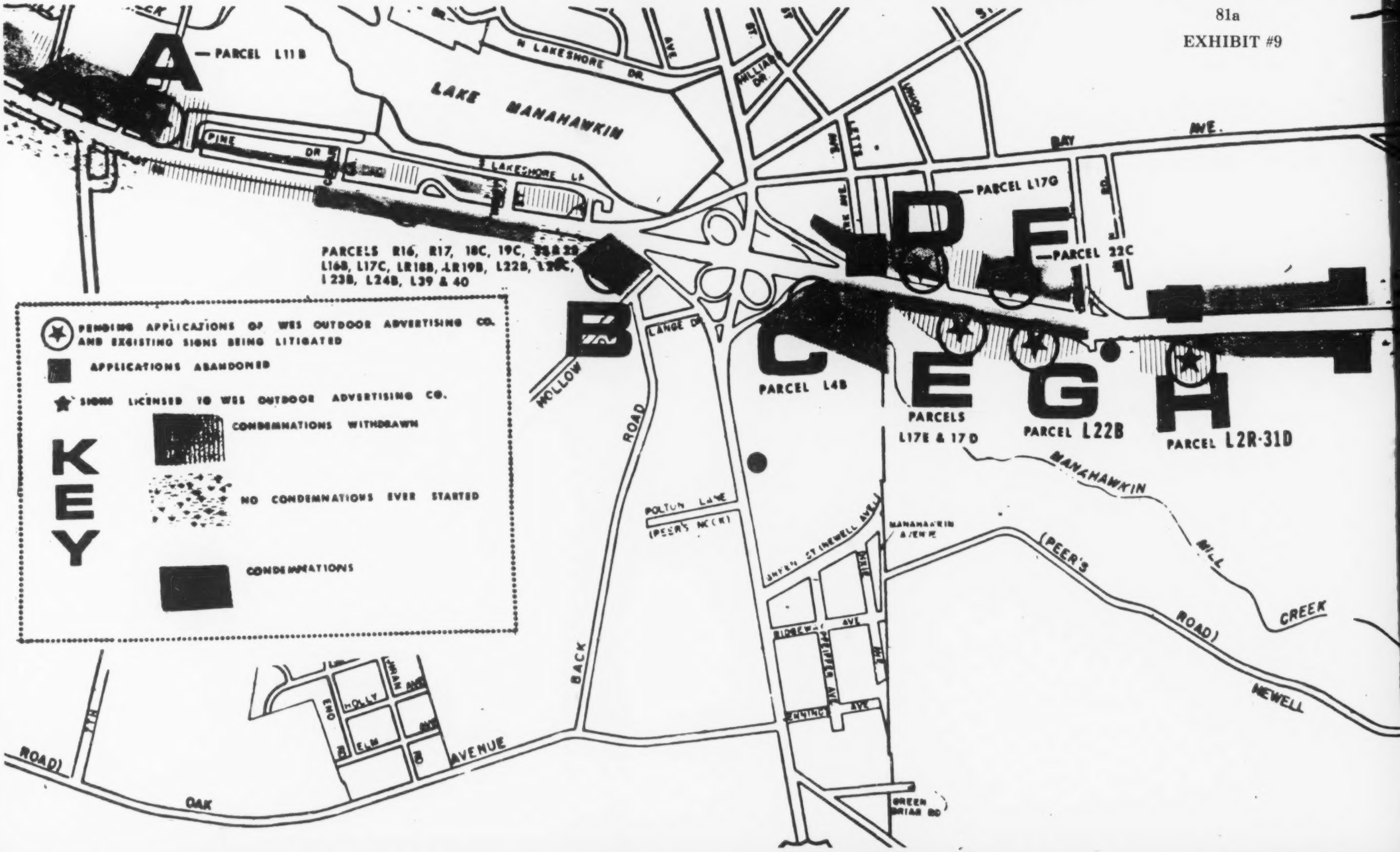

A
— PARCEL L11B
LAKE MANAHAWKIN
N LAKESHORE DR.
PINE
DR
LAKESHORE LA
PARCELS R16, R17, 18C, 19C, 21A & 22
L16B, L17C, LR18B, LR19B, L22B, L23C,
L23B, L24B, L39 & 40
B
LANGE DR
HOLLOW
ROAD
C
PARCEL L4B
D
PARCEL L17G
E
PARCEL 22C
F
PARCELS
L17E & 17D
G
PARCEL L22B
H
PARCEL L2R-31D
MANAHAWKIN
BAY
AVE.
POLTON LANE
(PEER'S NECK)
JAMES ST (NEWELL AVE)
MANAHAWKIN AVENUE
(PEER'S
ROAD)
MILL
CREEK
NEWELL
BACK
ROAD)
OAK
AVENUE
HOLLY
ELM
GREEN BRIAR RD
PENDING APPLICATIONS OF WEE OUTDOOR ADVERTISING CO. AND EXISTING SIGNS BEING LITIGATED
APPLICATIONS ABANDONED
SIGNS LICENSED TO WEE OUTDOOR ADVERTISING CO.
CONDEMNATIONS WITHDRAWN
KEY
NO CONDEMNATIONS EVER STARTED
CONDEMNATIONS

EXHIBIT #10

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Defendants
Richard J. Hughes Justice Complex
CN 114
Trenton, New Jersey 08625
(609) 292-5709

UNITED STATES DISTRICT COURT
For the District of New Jersey

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

v.

STATE OF NEW JERSEY, JOHN J. DEGNAN
DOROTHY ANDRES, AND NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Civil Action No. 80-531

CERTIFICATION

NICKOLAS F. MONTEFORTE, of full age, says:

1. On November 8, 1977, the Department of Transportation served upon Wesley K. Bell eight notices of eight separate sign encroachments on State right of way. Those notices, copies of which are attached as Exhibit "K," were as follows:

Exhibits.

SIGN ENCROACHMENT	GENERAL PROPERTY PARCEL SIGN MAP PARCEL NOS.
3SE9-86	L-11B
3SE9-87	L-22, 23 & 23B*
3SE9-88	L-4B
3SE9-89	L-17G
3SE9-90	L-17D
3SE9-91	L-22B
3SE9-92	L-22C
3SE9-93	L-2R31D

2. On December 19, 1977, Michael Malin, Esquire, attorney for Wesley K. Bell, wrote to the Department requesting that the Notices of Encroachments, copies of which are attached as Exhibit "L," be withdrawn or, in the alternative, that a hearing be granted.

3. Concurrently, on or about December 19, 1977, Wesley K. Bell, through his attorney Mr. Malin, instituted Civil Action No. 77-1531 in the United States District Court.

4. Also, concurrently, the case of *Bell v. Kohl* was proceeding in the Superior Court of New Jersey, Chancery Division, Ocean County, Docket No. C-2643-73. In that action, Bell was attacking, *inter alia*, the constitutionality of the Eminent Domain proceeding previously instituted by the Department of Transportation against properties in which he claimed an interest.

5. Although it was the opinion of the Department that the encroaching signs were not the subject of a valid permit, and were on State property, and, therefore,

* This parcel is not involved in the matter now before the Court.

were not within the purview of *N.J.A.C.* 16:41-8.11 with respect to the hearing entitlement provisions of *N.J.A.C.* 16:41-8.12, copies attached as Exhibit "M," nevertheless because of the various claims presented by Mr. Bell in the civil action, it was decided that a hearing would be desirable under the circumstances.

6. Thereafter on January 10, 1978, Mr. Bell, via his attorney, Mr. Malin, was notified that a hearing would be held on January 31, 1978, copy attached as Exhibit "N."

7. Subsequently, on January 17, 1978, Mr. Malin wrote to me advising that he intended to file a motion to restrain the hearing and requesting that I agree to hold up the hearing, copy attached as Exhibit "O."

8. On January 25, 1978, I replied to Mr. Malin advising him to seek adjournment from the hearing examiner and that I would not consent to it but also would not oppose his request, copy attached as Exhibit "P."

9. In early January 1978, Wesley K. Bell moved in United States District Court to enjoin the hearing.

10. On January 31, 1978, at the hearing Mr. Bell, through his attorney, took the position that the Commissioner of Transportation could not proceed with the hearing and stated that the subject of the hearing was before both the United States District Court (Civil Action No. 77-1531) and the Appellate Division of the Superior Court of New Jersey (Docket No. A-3891-76). Transcript p. 6, L. 20 through p. 8, L. 20, copies attached as Exhibit "Q".

Exhibits.

11. At the hearing, I represented the New Jersey Department of Transportation. The hearing proceeded until 4:40 p.m. on January 31, 1978. Contrary to the position taken by the plaintiff, the hearing was not adjourned because of a request made either by the Department of Transportation or me as their counsel. It was adjourned at that time due to the lateness of the hour, and because Mr. Malin had to "make a train." (Transcript p. 129, L. 21 through p. 130, L. 9, copies attached as Exhibit "R.") Former Attorney General John J. Degnan was not present at this hearing. He had been sworn in as Attorney General less than two weeks earlier.

12. The hearing was adjourned without date. To the best of my knowledge, Former Attorney General Degnan knew of neither the hearing nor the subject matter of said hearing.

13. It is my recollection that Mr. Malin did not wish the matter to resume until after he had received and read the transcript and until he had returned from a trip to the Soviet Union which he had planned to take in March of 1978. He was to contact me with respect to a continuance date for the hearing.

14. On February 8, 1978, Mr. Malin requested that the State produce certain witnesses at the next hearing date, copy attached as Exhibit "S."

15. Mr. Malin's request was denied by letter dated March 9, 1978, copy attached as Exhibit "T."

16. I never heard from Mr. Malin again with respect to the hearing. I did not know when he returned from vacation, nor did he advise me that he was at any time

ready to proceed with the matter or advise me of a date on which the matter could be rescheduled. This action was consistent with the move to enjoin the hearing.

17. Once the hearing was assigned to a hearing examiner in December 1977, the defendant, Dorothy L. Andres, took no part in the proceedings. She neither adjourned the matter nor did she have the authority to adjourn. Further, she had nothing whatsoever to do with the rescheduling.

18. In due course, the issues which were before the hearing examiner and which according to Mr. Malin were exactly the same as those before the United States District Court and the Appellate Division of the Superior Court of New Jersey (Hearing transcript, *supra*) were decided in favor of the Department of Transportation by those courts. As a result of the decisions, which applied to all parcels, (except L2R31D which had not been a part of those actions) it became absolutely clear that ownership of the land was vested in the State of New Jersey, Department of Transportation. In addition, the location of the signs on the property has been admitted by Wesley K. Bell in his verified petition for temporary restraints in this action. Hence, it is clear that if the hearing were to be resumed it could reach no conclusion that has not already been decided. It is just as clear that, as a matter of law, no permit may be issued for these signs and that they must be removed.

19. Regarding parcel E31B/L2R31D, Department records revealed a deed date December 5, 1974, recorded January 8, 1975, from Egan Kahl, et al, into the State, Book 3433, Page 225, Ocean County. However, there was a previously recorded contract for sale of the same parcel

from the prior owner, Gustav Foster, to Wesley K. Bell. The contract was dated December 26, 1968, and recorded on December 30, 1968, in Book 2865, Page 400, Ocean County. Foster conveyed to Kahl, et al, by deed dated November 24, 1971, recorded February 8, 1972, in Book 3186, Page 797.

It was the Department's understanding that there had been a breach of the 1968 contract by Mr. Bell and that the contract was invalid. Nevertheless, while asserting title to the E31B/L2R31D property, it was recognized that Mr. Bell should be given the opportunity to produce any and all documentation to show entitlement to a permit for the sign located on E31B/L2R31D. Both the November 13, 1979, letter, Exhibit "F", Andres Affidavit, and the February 5, 1980, letter, attached hereto as Exhibit "U," requested that he provide this documentation. Plaintiff has failed to respond to either letter and it is submitted that no such documentation can be produced.

20. Attached for the convenience of the court are the following documents (respectively Exhibits "V" through "BB") indicating proof of ownership of the subject parcels by the New Jersey Department of Transportation:

a. Complaint, Declaration of Taking or Lis Pendens, where applicable, Order for Possession, Report of Commissioners, and, if appealed, a copy of the Judgment on Appeal for parcels L-11B, L-4B, L-17G, L-17D, L-22B and L-22C.

b. Copy of Deed dated December 5, 1974, recorded January 8, 1975, from Egan Kahl, et al, to New Jersey Department of Transportation.

The foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

NICKOLAS F. MONTEFORTE

EXHIBIT #11

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Defendants
Richard J. Hughes Justice Complex
CN 114
Trenton, New Jersey 08625
(609) 292-5709

UNITED STATES DISTRICT COURT
For the District of New Jersey

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

v.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES, and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Civil Action No. 80-531

AFFIDAVIT OF DONALD CATTS

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MERCER)

DONALD CATTS of full age, being duly sworn according to law, deposes and says:

1. I am employed by the New Jersey Department of Transportation in the present capacity of Senior Engineer and have been employed by DOT for the past 19 years.

2. During the latter part of 1977, I served as Chief of a Field Party assigned to survey the location of the Wes Outdoor Advertising Company signs which are the subject of the present action and which were also the subject of Violation Notices sent out in November, 1977.

3. As a result of that survey a map plotting of each encroachment was made on the existing State Highway Department General Property Parcel Map applicable to each parcel.

4. True and exact copies of these maps showing each parcel and its respective encroachment are attached hereto as Exhibits A through D.

5(a) Parcel L11B appears on Exhibit A: General Property Parcel Map Route 72, Section 6, Sheet 3 of 7.

(b) Parcel L4B appears on Exhibit B: General Property Parcel Map Route 72, Section 7, Sheet 1 of 11.

(c) Parcels L17G, L17D, L22B and L22C appear on Exhibit C: General Property Parcel Map Route 72, Section 7, Sheet 2 of 11.

(d) Parcel L2R31D appears on Exhibit D: General Property Parcel Map Route 72, Section 7, Sheet 3 of 11.

DONALD D. CATTS
Donald Catts

Sworn and subscribed before me
this 2nd day of September, 1982

NICKOLAS F. MONTEFORTE
Nickolas F. Monteforte
An Attorney-at-Law of New Jersey

EXHIBIT #12

(Seal)
STATE OF NEW JERSEY
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

In Reply Please Refer to
Route: 72
Section: 7
Parcel: L2R31D
Kahl, Ackaway

Al Am Sagner
Commissioner

February 3, 1975

Mr. Michael Ackaway
368 Hilltop Road
Toms River, New Jersey

Dear Mr. Ackaway:

The State Treasurer has issued a warrant check for $12,000.00, No. A711800, dated January 29, 1975, payable to Egon Kahl & Ede Kahl and Michael & Rita Ackaway, in settlement of the claim against the State of New Jersey by reason of the conveyance to the State of the above designated parcel. This check will be forwarded upon the disposition of the following.

1. Proof to be furnished of payment of the 1975 real estate taxes to the date of possession.

2. Bargain and Sale Deed to Be Produced:
From Wesley Kenneth Bell, for easement as contained in DB3187 page 1.

3. Notification of acceptance of possession to be furnished this office by the Bureau of Property and Relocation. This can be accomplished by notifying Mr. Paul Pearson, Freehold, NJ, at the following telephone number: 201-431-4500.

4. The enclosed Order of Dismissal to be executed and returned to this office.

Very truly yours,

PAUL J. HOWARD
Paul J. Howard, Supervisor
609-292-3222
Settlement Section
Bureau of Titles

PJH:mef

Enclosure

I spoke (illegible)

EXHIBIT #13

(Seal)
State of New Jersey
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

In Reply Please Refer To
Route: 72
Section: 7
Parcel: L2R31D

Kahl, et al

Al Am Sagner
Commissioner

March 13, 1975

Mr. Michael Ackaway
368 Hilltop Road
Toms River, New Jersey

Dear Mr. Ackaway:

Reference is made to the easement over the subject parcel held by Westley Kenneth Bell. It is my understanding that Mr. Bell has refused to execute a deed releasing his leasehold interest into said parcel to the State of New Jersey.

If Mr. Bell's position is unchanged, this office has no other recourse but to rescind the agreement entered into between yourself, your wife, Rita, Mr. and Mrs. Kahl, and the State of New Jersey. Would you be kind enough to advise this office as to Mr. Bell's present attitude in this matter.

If Mr. Bell refuses to release his leasehold interest, would you be kind enough to return to this office the *unsigned* Order of Dismissal forwarded to you under my correspondence of February 3, 1975. Enclosed for your convenience find self-addressed envelope.

Very truly yours,

PAUL J. HOWARD
Paul J. Howard, Supervisor
Settlement Section
Bureau of Titles

PJH:mef
Enclosure

EXHIBIT #14

Parcel #L2LR31D

Subject—Loss of Advertising Revenue Because of State's Refusal to Consider or Issue Advertising Permits on Subject Premises Listed Above

September 1968 to September 1969	$1,400.00 $1,400.00	=	$ 2,800.00
September 1969 to September 1970	$1,500.00 $1,500.00	=	$ 3,000.00
September 1970 to September 1971	$1,800.00 $1,800.00	=	$ 3,600.00
September 1971 to September 1972	$2,600.00 $2,600.00	=	$ 5,200.00
September 1972 to September 1973	$3,000.00 $3,000.00	=	$ 6,000.00
September 1973 to September 1974	$3,000.00 $3,000.00	=	$ 6,000.00
September 1974 to September 1975	$3,500.00 $3,500.00	=	$ 7,000.00
September 1975 to September 1976	$3,500.00 $3,500.00	=	$ 7,000.00
September 1976 to September 1977	$3,600.00 $3,600.00	=	$ 7,200.00
September 1977 to September 1978	$4,200.00 $4,200.00	=	$ 8,400.00
September 1978 to September 1979	$4,300.00 $4,300.00	=	$ 8,600.00
September 1979 to September 1980	$4,500.00 $4,500.00	=	$ 9,000.00
September 1980 to September 1981 (L.P.C. sign finisher Aug. 1981)	$4,500.00 $5,000.00	=	$ 9,500.00
September 1981 to September 1982 (Chrysler sign finisher Oct. 12, 1982)	$5,000.00		
TOTAL LOSS OF INCOME ON THIS PARCEL			$88,300.00
Interest to be added at future date of Judgment			$

Agreement for Sale adopted by the County Board of Realtors. Revised 1966. (36)

EXHIBIT #15

This Agreement, MADE THIS 26th day of December
19 68
Between GUSTAV FOSTER and MARGARET his wife of Bay Ave, Manahawkin, N.J.
of the First Part, hereinafter called the "Seller" and WESLEY KENNETH BELL of Bay Ave. Manahawkin, N.J.
of the Second Part, hereinafter called the "Buyer."

Witnesseth, That the Seller and Buyer respectively agree to sell and buy ALL of a tract of land lying on the South Side of New Rt. 72 abant 2/10 of a mile East of Jennings Road and measuring 165 ft. frontage more or less and a dept of 225 ft. +- to approximately 245' +- and having appropximately 0.868 remaining acres

for the price of TWELVE THOUSAND Dollars,
under the following conditions:

1. A payment of Two Hundred Dollars Dollars made herewith is to be applied on account of the purchase price, upon the compliance by the Buyer with this agreement.

2. Settlement is to take place at the office of Richard J. Shebilton, Shiz Bettes N.J. at the cost of the Buyer
on the 15th day of February, 1975, at Four o'clock P. M., which time is of the essence of this agreement, when the Seller shall deliver a warranty deed for the said premises, and the balance of the purchase price is to be paid or secured as follows:

$800.- Feb 15th 1969
$2000.- Feb 15th 1970
$2000.- Feb 15th 1971
$2000.- Feb 15th 1972
$2000.- Feb 15th 1973
$2000.- Feb 15th 1974
$1000.- Feb 15th 1975
$12,000.- Total Price

Such part of purchase price, if any, unpaid at time of settlement, is to be delivered to ~~the Buyer~~ the Seller (W.B M) to be disbursed after any reputable title Company Company has completed the necessary continuation search to cover the record date of said deed.

3. In the event of the Buyer not making settlement in accordance with the terms hereof the payment or payments made on account shall, at the Seller's option, be forfeited as liquidated damages for the failure of the Buyer to settle; or be applied on account of the purchase price.

4. The title to be delivered shall be a marketable title and insurable by any reputable title Company (Title Company) and shall be free and clear of all encumbrances including municipal liens and assessments and liability for assessments for improvements now constructed (except as herein stated), this clause to be operative as of the date of this agreement, and the title is to be subject to all existing restrictions of record, the seller, however, guarantees that there are no restrictions in any conveyance or plans of record affecting the said premises, which will prohibit the use and/or occupancy thereof as — None — and the premises shall be conveyed in the same condition as the same now are, reasonable wear and tear excepted.

5. In the event that such title cannot be made by the Seller as above, and the Buyer is unwilling to accept such title as the Seller can make, then at Buyer's option, the above payment or payments shall be returned to the Buyer, together with the reasonable expenses of examining the title and making survey, or the Buyer may prosecute any legal or equitable action to which the Buyer may be entitled.

6. Actual possession is to be given to the Buyer on the day of settlement, except as herein stated immediate possession upon signing of this agreement
If the Buyer accepts possession, with the Seller's consent, before the time of settlement, then the Seller shall be allowed by way of adjustment, interest at 6% on the unpaid balance of the purchase price from the date of possession to the date of settlement.

7. Taxes, water and sewer charges, property rentals and other current charges shall be adjusted as of the date of settlement, unless possession be given prior thereto, in which case all such adjustments shall be made as of the date of delivery of possession.

97a EXHIBIT #15

M.J

Buyer

8. The Seller shall pay for the drawing of this deed and all revenue stamps thereon, if any be necessary; but all searches, title insurance and other conveyancing expenses are to be paid for by the Buyer.

9. This agreement includes all fixtures permanently attached to the building or buildings herein described, and appurtenances; also specifically includes the following items:

None

10. None

The words "SELLER" and "BUYER" in this agreement shall be construed to mean both the plural and singular number and to mean not only the party thereby designated, but also his, her or their respective heirs, executors or administrators; or in the event that either or both parties are corporations, its or their successors.

This agreement may be assigned by the Buyer with the written assent of the Seller.

In Witness Whereof, the parties hereto have hereunto set hand and seal

dated the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Constance L. Miller

NOTARY PUBLIC / CAMDEN COUNTY
My Commission Expires March 6, 1973

Wesley Kenneth Bell - Buyer [L. S.]

Gustav Foster - Seller [L. S.]

Mary Ann Foster - Seller [L. S.]

[L. S.]

Copy

Agreement for Sale of Real Estate

Adopted by the Camden County Board of Realtors

RECORDED
CLERK'S OFFICE
'68 DEC 30 PM 1 45

034791

Edward K.

for Clark

STATE OF

COUNTY } ss.:

Be it Remembered, that on the 26 day of December in the year of our Lord one thousand nine hundred and Sixty Eight before me, the subscriber personally appeared before me who being by me duly sworn, on oath saith, that he is the Treasurer of the grantor within named, and that the deponent knows the common or corporate seal of said grantor and that the seal affixed to the within Agreement is such common or corporate seal; that the said Agreement was signed by the said President and the seal of said grantor affixed thereto in the presence of deponent; the said Agreement was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said grantor; and at the execution thereof this deponent subscribed his name thereto as witness.

Sworn and subscribed the day and year aforesaid

STATE OF

COUNTY } ss.:

Be it Remembered, that on the 26 day of December in the year of our Lord one thousand nine hundred and Sixty Eight before me, the subscriber personally appeared before me who I am satisfied is the grantor named in the above Agreement and acknowledged that they signed, sealed and delivered the same as their act and deed. All of which is hereby certified.

Constance L. Miller

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 6, 1973

EXHIBIT #16

[Book 3187 Page 1] *AGREEMENT*

THIS INDENTURE, made this 7th day of January, 1972, is made by and between EGON KAHL and EDE KAHL, his wife, residing at 239 Boyden Avenue, Maplewood, New Jersey, and HARRY C. BALDASSARRE and REINELDA BALDASSARRE, his wife, residing at Chancellor Avenue, Irvington, New Jersey, and MICHAEL ACKAWAY and RITA ACKAWAY, his wife, with a mailing address of Route #37 and Berry Avenue, Toms River, New Jersey, hereinafter designated as the Grantors, and WESLEY KENNETH BELL residing at Route #72, Manahawkin, Stafford Township, hereinafter designated as the Grantee, is made for and in consideration of ONE DOLLAR ($1.00) and other good and valuable consideration together with the mutual covenants contained herein and is made under the following terms and conditions, to wit:

1. The Grantors hereby bargain, sell, grant and convey unto the said Grantee a permanent easement across a portion of a parcel of land conveyed to the Grantors hereinabove named by deed from Gustav Foster and Margaret Foster, his wife, dated November November 24, 1971 and intened to be recorded prior to or simultaneously with the recording of this instrument. The within created easement is more particularly described in "Schedule A" which is attached hereto and made a part hereof and gives the Grantee the right to use said property for the purpose of the erection and maintenance of one double faced straight or "V" type bill board to be erected at the sole expense of the Grantee. The Grantee is also given the right of pedestrian and vehicular access across the property

described in "Schedule A" which is attached hereto for the purpose of access for maintenance and erection of said sign or bill board.

2. The within created easement is expressly subject to the condition that the Grantee must erect a bill board or sign within fifteen (15) years [Book 3187 Page 2] after the date of the execution of this agreement or the said easement, shall terminate, be null and void and of no effect whatsoever. The condition shall, however, in no way effect the right of the Grantee to enter upon the lands subject to this easement for maintenance of the said sign once it is erected.

3. The Grantee hereby agrees to pay the pro rata share of the real estate taxes which shall forthwith be assessed on the vacant land, based upon the frontage used by the Grantee and the Grantee will further agree to pay any additional taxes which may be assessed on the said sign or bill board.

3-B. (See Scheudle B attached).

4. Where ever in this instrument any party or parties shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words heirs, executors, administrators, personal or legal representative and assigns had been inserted after each and every such designation.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year aforementioned.

	EGON KAHL	[L.S.]
	Egon Kahl	
COLIN R. HAZELTONE	EDE KAHL	[L.S.]
	Ede Kahl	
	HARRY C. BALDASSARRE	[L.S.]
	Harry C. Baldassarre	
COLIN R. HAZELTONE	REINELDA BALDASSARRE	[L.S.]
	Reinelda Baldassarre	
	MICHAEL ACKAWAY	[L.S.]
	Michael Ackaway	
COLIN R. HAZELTONE	RITA ACKAWAY	[L.S.]
	Rita Ackaway	
COLIN R. HAZELTONE	WESLEY KENNETH BELL	[L.S.]
	Wesley Kenneth Bell	

[Book 3187 Page 3] SCHEDULE "A"

BEGINNING at a point in the southwesterly sideline of the present right-of-way of New Jersey Route No. 72, said point being distant south 51 degrees 45 minutes 00 seconds east 946.96 feet from the intersection of the southwesterly sideline of New Jersey Route No. 72 and the southeasterly sideline of Jennings Road (said point also being the northeasterly corner of Lot 31 in Block 147 according to the tax map of Stafford Township and running thence (1) south 32 degrees 45 minutes .00 seconds west a distance of 100 feet to a point thence (2) north 51 degrees 45 minutes 00 seconds west and parallel with the said southwesterly sideline of New Jersey Route No. 72 a distance of 25 feet to a point thence (3) north 32 degrees 45 minutes .00 seconds east and parallel with the first course hereinabove described a distance of 100 feet to a point in the said southwesterly sideline of New Jersey Route No. 72 and thence (4) south 51 degrees 45

minutes .00 seconds east along the said southwesterly sideline of New Jersey Route No. 72 a distance of 25 feet to a point said point being the point and place of beginning.

[Book 3187 Page 4] "SCHEDULE B"

3-B. Grantee hereby agrees that any billboard to be erected shall not obstruct from the view of the travelling public using Route #72, a building or structure erected by Grantors or as reserved by Grantors by plan to be submitted to Grantee within fifteen (15) days of notification to Grantors of the intention of Grantee to commence the erection of said bill board, provided that both parties hereto agree that nothing contained herein shall preclude Grantee from erecting a bill board at a height of twenty (20) feet from ground level nor shall Grantee erect a bill board with its base less than twenty (20) feet from ground level.

[Book 3187 Page 5] *ACKNOWLEDGMENT*

STATE OF NEW JERSEY
COUNTY OF OCEAN ss.

BE IT REMEMBERED, that on this 4th day of January, in the year of our Lord one thousand nine hundred and seventy-two, before me, the undersigned authority, personally appeared Egon Kahl and Ede Kahl, his wife, who I am satisfied are the Grantors in the within agreement and acknowledged that they signed, sealed and delivered the same as their act and deed. All of which is hereby certified.

COLIN R. HAZELTONE
Colin R. Hazeltone
An Attorney-At-Law
Of New Jersey

ACKNOWLEDGMENT

STATE OF NEW JERSEY
COUNTY OF OCEAN ss.

BE IT REMEMBERED, that on this 7th day of January, in the year of our Lord one thousand nine hundred and seventy-two, before me, the undersigned authority, personally appeared Harry C. Baldassarre and Reinelda Baldassarre, his wife, and Michael Ackaway and Rita Ackaway, his wife, who I am satisfied are the Grantors in the within agreement and acknowledged that they signed, sealed and delivered same as their act and deed. All of which is hereby certified.

COLIN R. HAZELTONE
Colin R. Hazeltone
An Attorney-At-Law
Of New Jersey

ACKNOWLEDGMENT

STATE OF NEW JERSEY
COUNTY OF OCEAN ss.

BE IT REMEMBERED, that on this 7th day of January, in the year of our Lord one thousand nine hundred and seventy-two, before me, the undersigned authority, personally appeared Wesley Kenneth Bell who I am satisfied is the Grantee in the within agreement and acknowledged that he signed, sealed and delivered same as his act and deed. All of which is hereby certified.

COLIN R. HAZELTONE
Colin R. Hazeltone
An Attorney-At-Law
Of New Jersey

Prepared By: R
Shackleton and Kelly
Counsellors at Law
22nd St. and Long Beach Blvd.
Ship Bottom, New Jersey 08008

005103
Recorded
Ocean County Clerk's
Office
'72 Feb 7 PM 2 01
Book 3187 Page 1
of Deeds Clerk
Edward (Illegible)

EXHIBIT #17

SUPERIOR COURT OF NEW JERSEY
Law Division
Ocean County
Docket No. L-1917-67 P.W.

Civil Action

WESLEY KENNETH BELL and
THELMA J. BELL,

Plaintiffs,

vs.

STATE OF NEW JERSEY by
DAVID J. GOLDBERG,
Commissioner of Transportation,

Defendant.

ORDER

THIS MATTER being opened to the Court on Tuesday, October 15, 1968, by Hartman and Schlesinger, Esquires, attorneys for the plaintiff, Alfred A. Faxon, III, Esquire, appearing, in the presence of Philip S. Carchman, Esquire, Deputy Attorney General, on behalf of Arthur J. Sills, Attorney General, attorney for the defendant, and the Court having before it a Stipulation of the Facts herein agreed to by the attorneys for the parties, and having considered the arguments of counsel:

Exhibits.

It is on this 29 day of October 1968, ORDERED that judgment be entered in favor of the plaintiff against the defendant determining that the plaintiff is the owner of lands abutting its properties, which are designated as Lots 3, 4, 5 and 6 in Block 120 on the Tax Map of Stafford Township, Ocean County, New Jersey, which lands lie between the center lines and curb lines at Poe Street and Philadelphia Avenue as shown on said Map; and

BE IT FURTHER ORDERED that the defendant be and is hereby required to condemn so much of said lands as are to be taken for highway purposes.

EDWARD V. MARTINO, *A.J.S.C.*

We hereby consent to the above Order as to form.

HARTMAN & SCHLESINGER
Attorneys for plaintiff

By ALFRED A. FAXON, III

ARTHUR J. SILLS, Attorney General
Attorney for defendant

By PHILIP S. CARCHMAN
Deputy Attorney General

EXHIBIT #18

Map Reference A

Parcel #L11B
State cancelled license to this sign without hearing
Billboards' replacement valued at $19,000.00

Contracted Income 1983
L.B.I. Medical Center $5,200 per year

Manahawkin Chrysler-Plymouth $2,400.00 per year

EXHIBIT #19

Parcel #L11B - Map Reference A
Photos show State's Destruction of Billboards on September 30, 1983 without notice.

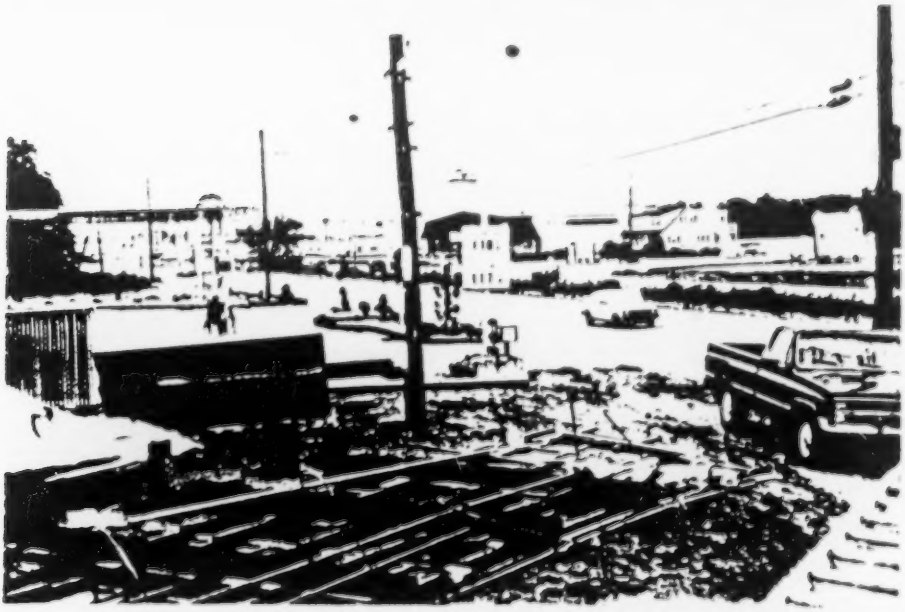
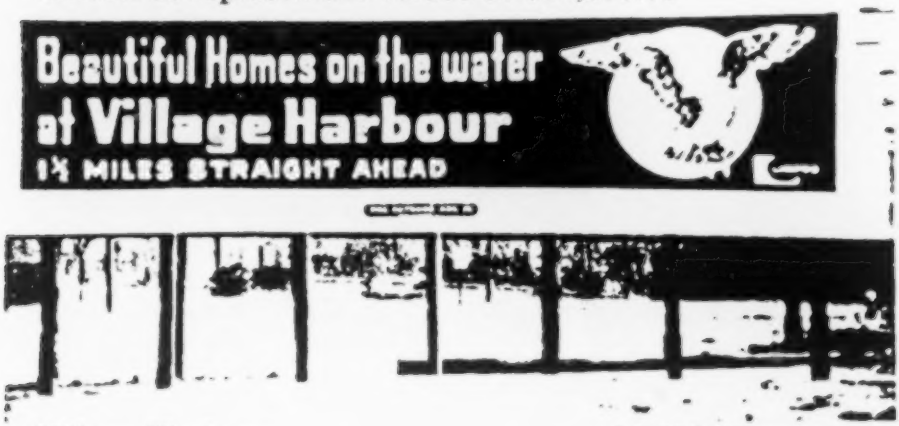


EXHIBIT #20

Map Reference B

Parcels #L16B, L17C, LR18B, LR19B, L22B, L23C, L23B, L24B, L39 and 40
Licensed by New Jersey and are a part of this suit
Billboards replacement valued at $24,000.00



Village Harbour $4,600.00 per year
1983 Rates

Nobody Wants a Nuclear War $2,400.00 per year value
Facings being changed on left side
of westbound sign $2,400.00 per year value
1983 Rates

EXHIBIT #21

Parcel #L22B Map Reference B

Without notice or right of entry State employees destroyed Billboards, in pouring rain, on September 30, 1983, accompanied by armed, uniformed State Police.

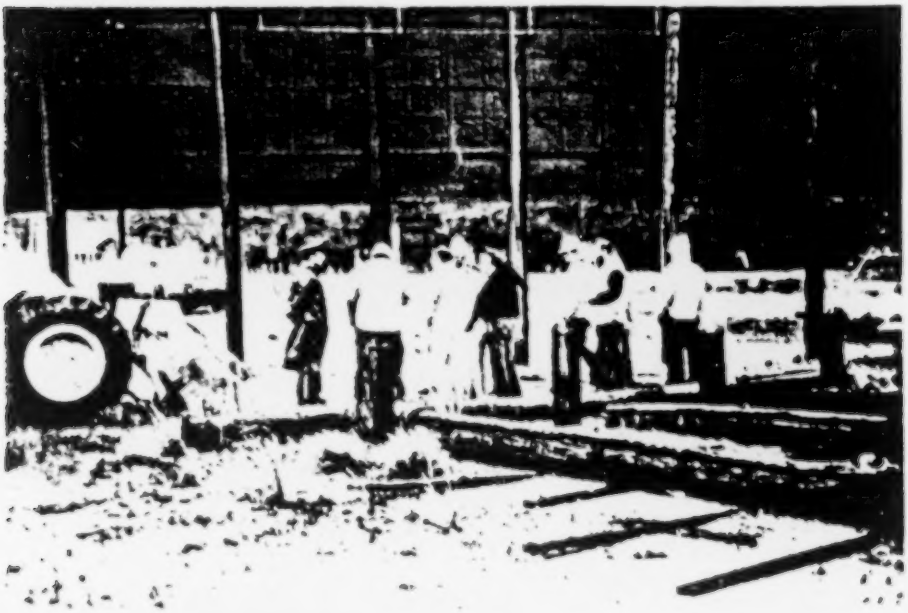


EXHIBIT #22

Parcel #L4B Map Reference C

Billboards on this site, which were three and a half stories above ground, were totally destroyed on September 30, 1983, without notice to Plaintiff, and cut up into small pieces on October 2, 1983, and hauled away.

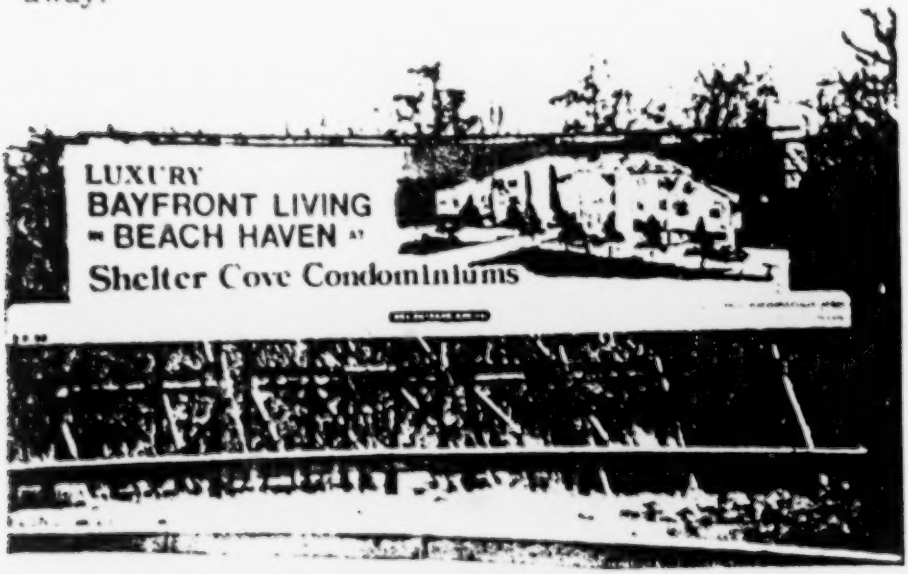


EXHIBIT #23

Parcel #L17G
Billboard's replacement valued at $24,000.00

The Outdoorsman — $4,600.00 per year
1983 Rates

First Jersey Bank — $3,000.00 per year
POW/MIA — $2,400.00 year value
1983 Rates

* Above billboards destroyed by State on September 30, 1983, without notice

EXHIBIT #24

Parcel #L17E and L17D Map Reference E

Billboards destroyed by State employees on September 30, 1983, without notice

EXHIBIT #25

Parcel #L17E and L17D Map Reference E
Billboards replacement valued at $24,000.00

Anderson Agency $5,200.00 per year
1983 Rates

Okie's Meat Market $2,400.00 per year
U.S. Marines $2,400.00 year value
1983 Rates

EXHIBIT #26

Parcel #L22C Map Reference F
Billboards replacement valued at $26,000.00

Under contract with
Bealls Market $4,600.00 per year
1983 Rate

Poppy Feather Park $4,000.00 per year
1983 Rate

EXHIBIT #27

Parcel L22C Map Reference F

Billboards cut down and destroyed by State employees without notice on September 30, 1983

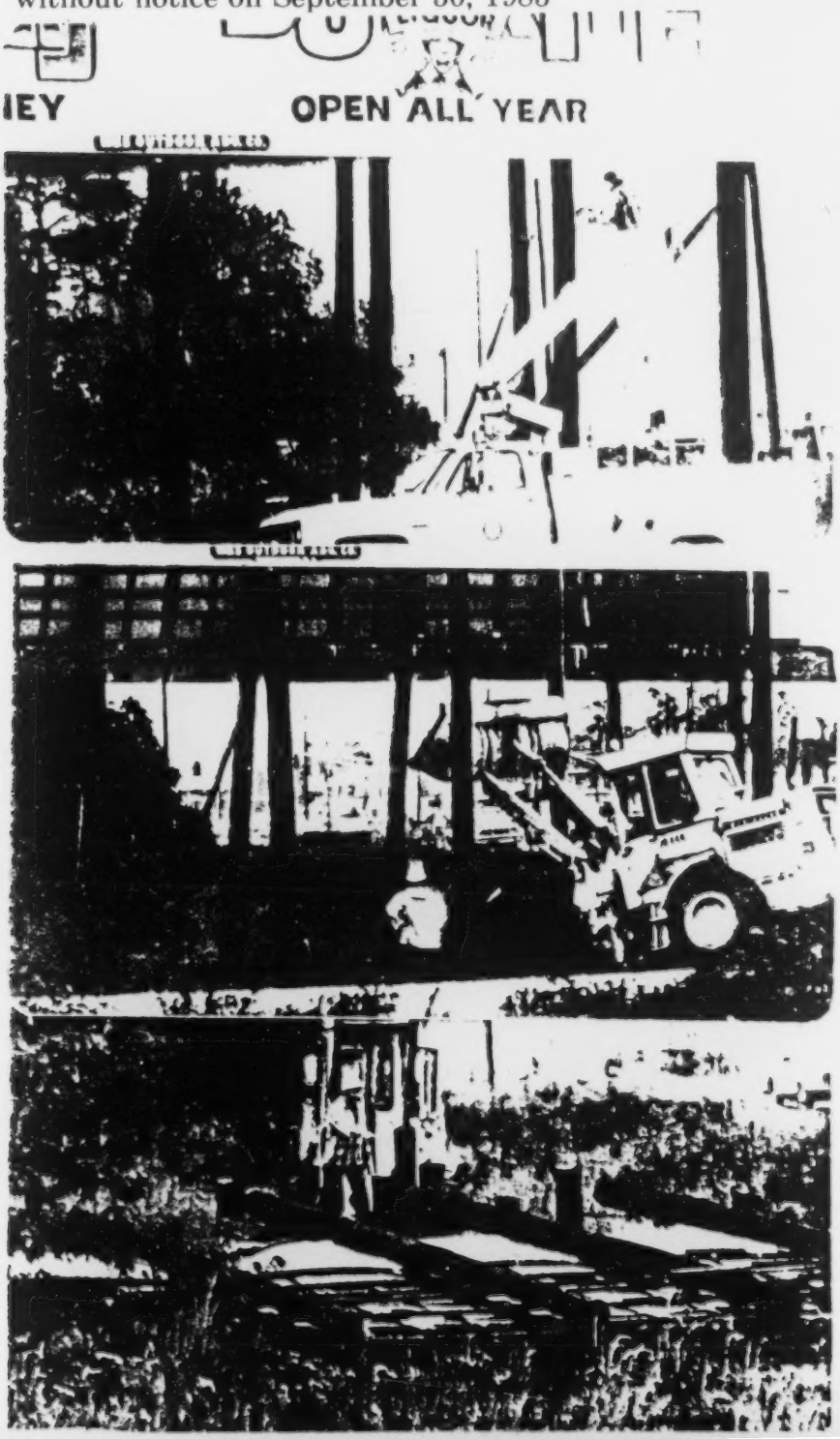


EXHIBIT #28

Parcel #L22B Map Reference G
Billboards replacement valued at $24,000.00

Colony Lakes $4,600.00 per year
1983 Rates

Lucilles Candies $2,400.00 per year
POW/MIA $2,400.00 per year value
Rented to Greens Army & Navy Store 1983 Rates

Billboards cut down and destroyed by State employees on September 30, 1983 without notice

EXHIBIT #29

Parcel #L2R-31D Map Reference H

Billboards replacement valued at $35,000.00

Manahawkin Chrysler-Plymouth $5,000.00 per year

Colony Lakes $4,600.00 per year

State claimed ownership to this parcel and threatened to destroy billboards even though they had no legal right of entry or ownership

EXHIBIT #30

Map Reference J
Parcels #L3E1 and 2 and TLE-1G and 1H

Billboard's replacement value $26,000.00

Port O' Call $10,200.00 per year rental

* This billboard has been in this location since 1958 and is presently licensed by New Jersey and is part of this litigation

EXHIBIT #31

Map Reference J

Parcel #L3E1 and 2 and TLE-1G and 1H

Billboard replacement value $26,000.00

First Jersey Bank $10,200.00 per year rental

* This billboard has been in this location since 1958 and is presently licensed by New Jersey and is part of this litigation referred to in Count 48, Section C

EXHIBIT #32

Parcels #L3E1 and 2 and TLE-1G and 1H

Billboard replacement value $26,000.00

Ship Bottom and Hand Store $10,200.00 per year rental

* This billboard has been in this location since 1958 and is presently licensed by New Jersey and is part of this litigation

EXHIBIT #33

Map Reference J

Parcel #L3E1 and 2 and TLE-1G and 1H

Billboard replacement value $28,000.00

Shelter Cove Condominiums $10,200.00 per year rental

* This billboard has been in this location since 1958 and is presently licensed by New Jersey and is part of this litigation

EXHIBIT #34

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, OCEAN COUNTY
DOCKEN NO. L 13980-68 P.W.

CIVIL ACTION

WES OUTDOOR ADVERTISING COMPANY,
a corporation of the State of New Jersey,
and WESLEY K. BELL,

Plaintiffs,

vs.

DAVID J. GOLDBERG, Commissioner of
Transportation of the State of New Jersey,

Defendant.

AFFIDAVIT

STATE OF NEW JERSEY)
) ss.
COUNTY OF MERCER)

CLARENCE R. PELL, being of full age and being duly sworn upon his oath deposes and says:

1. I am a Landscape Architect for the Department of Transportation of the State of New Jersey. I have been employed in that capacity by the Department of Transportation since May 1946. I hold a Bachelor of Science Degree in Landscape Architecture from the Michigan State College, now Michigan State University, which I obtained in 1938. I have participated in numerous landscaping projects for the New Jersey

Department of Transportation including the Department's section of the Garden State Parkway, Federal Aid Interstate System, the Palisades Interstate Highway (Thruway) and all other State Highway roads in New Jersey since 1946. I am licensed to practice landscape architecture in the State of New York, which State requires such licenses.

2. I have read the Affidavit of Wesley K. Bell submitted in support of the motion to dissolve the restraints against the plaintiffs in this matter.

3. I know of no instance in which the Department of Transportation has permitted gasoline stations to be erected on parcels on Route 72 which the Department intended to acquire for landscaping purposes under any circumstances other than those stated below.

I am the head of the landscaping section of the Department of Transportation and in charge of developing plans for the acquisition and development of property to be acquired for landscaping.

4. Mr. Bell has made general allegations in his affidavit which for that reason I am not in a position to answer. He has mentioned three specific parcels, namely: L 13E, L 15H and L 17F. Parcel L 13E was omitted in the early stages of our landscaping because before the plans for that parcel were finished and a final decision made with regard to acquisition, the gasoline station was erected. It was decided by the department that it would be consistent with the public interest to leave the only functioning gasoline station in place, and for this reason it was decided not to acquire that parcel. With regard to the construction on Parcels L 15H and L 17F, the only reason that the department did not move against these

two parcels was a failure of communciation within the Department of Transportation. By the time I became aware of the construction on these parcels the construction was completed and there is nothing to gain by obtaining an injunction. Despite the construction on these two parcels the Department of Transportation has every intention of proceeding with condemnation for the acquisition and will use them for landscaping purposes.

5. In paragraph six of his affidavit, Mr. Bell again, without specifying where, makes the general statement that a competing advertising firm, when he does not name, has been erecting signs and clearing vegetation and trees. The only clearing for advertising signs of which I am aware was done by one Tooker, another advertising company, at a date when our plans were incomplete. This was long before the obtaining of the injunction against Mr. Bell. The Department of Transportation intends to acquire a number of parcels on which Tooker has advertising signs, but I am unaware of any instance at all, subsequent to the date of the injunction against the plaintiffs in this matter, in which any outdoor advertising company has cleared land or interfered with the vegetation in the immediate area. If Mr. Bell will point out specifically which areas to be acquired by the Department of Transportation are being cleared by other advertising companies I will make every effort to take action to see that this is stopped.

CLARENCE R. PELL
Clarence R. Pell

Sworn to and Subscribed
before me this 28th day
of May, 1969.
ROYAL B. GIFFEN
An Attorney At Law of New Jersey

EXHIBIT #35

Memorandum for Stafford Township

Re: Conference with Deputy Commissioner of Transportation, Mullen
At: Trenton, New Jersey
Date of Meeting: February 17, 1969, at 3 P.M.
In Attendance:
For the State - Mullen, Cunningham and Blaus
For Stafford - Committeemen Boltner, Holm and Mayor Cervetto; Engineer, Ernst; Attorney, Schuman
Also previously in attendance: Assemblymen, Mabie and Brown

State Beautification Program pursuant to the provisions of Title 27

During the discussion among those above named persons, it was disclosed that the State intended to obtain a right-of-way on the southerly side of Bonnett Island to a depth of 100 feet south of the bridge. They indicated, however, that there would be no action in the foreseeable future unless someone were to start to build on the Island. The governing body mentioned the extensive grants of lands to the Federal Government for conservation purposes and noted its objection to the acquisition of such a substantial portion of Bonnet Island, thereby reducing the available ratables to the municipality.

There was an extensive discussion concerning the proposed 100 feet right-of-way to be acquired on either side of the new State Highway #72, and it was agreed by Mr. Mullen that selective thinning of trees and undergrowth would be permitted by the property owners, and they were to have reasonable access to their respective properties.

It was also noted that the purpose and intent of the State was not to discourage use of the property for commercial purposes, but to attempt to prevent the highly commercial appearance of having unbroken black top with fluorescent fixtures, etc., immediately on the edge of the right-of-way of the highway.

The problem of a bridge to accommodate the residents of Beach Haven West was also discussed at length, and the Committee was advised by Mr. Mullen that he was going to recommend the construction of the facility to the Commissioner of Transportation. Mr. Mullen left the meeting for a short time, and upon his return noted that the bridge matter had been discussed with the Commissioner and he felt that approval for its construction would be forth-coming shortly.

During the course of the meeting, both Mullen and Cunningham appeared to have agreed that the proposed right-of-way for beautification purposes would be limited to 60 feet rather than 100 feet. However, there was a considerable discussion that while they would proceed with a condemnation proceeding in its present form describing a proposed right-of-way to a depth of 100 feet, Mr. Mullen stated that as soon as the problems with Wesley Bell had been resolved, the condemnation proceeding would be amended to take only 60 feet rather than 100 feet as shown on the plans.

However, those statements were subsequently qualified by Cunningham and Mullen and that they said that the uses to which the property was to be put, the topography, the topography, etc., would be reviewed by the Commissioner and that the Department was not

committed to a 100 feet right-of-way, and in some instances, might agree to even less than 60 feet if that was desirable, depending upon the size of the property, etc.

It was agreed that a letter would be written by the Highway Department to the Township Committee that it was unfeasible to have a traffic light at the entrance to Beach Haven West as proposed by the residents.

EXHIBIT #36

Public Enemy No. 1

United Press International Telephoto

STICKY PICKET — New Jersey businessman Wesley K. Bell of Manahawkin holds his placard while picketing the White House in protest of a State Highway Department decision to take over some of his advertising billboards because they 'violate the landscape and scenic enhancement provisions of the highway beautification act.' Bell said he had appealed to both Rep. William T. Cahill (R-N.J.) and President Nixon. Having no luck with either, Bell decided to picket the White House.

EXHIBIT #37

In reply please refer to
Route 72, Section 6
Wesley K. Bell & Wes Outdoor
Advertising Company, Inc.

(Logo)
State of New Jersey
Department of Transportation
John C. Kohl, Commissioner
Trenton 08625

November 4, 1970

Mr. Wesley Kenneth Bell
113 Longbeach Boulevard
North Beach, New Jersey

Dear Mr. Bell:

A copy of Mr. Alfano's letter to you dated October 21, 1970, has been referred to this office to reply to your comments concerning relocation payments.

Our records indicate that you have been contacted personally on many occasions by Mr. Delaney and representatives of the Freehold office concerning the billboards owned by you on the above premises. I am sure Mr. Delaney has indicated that there is pending legislation concerning relocation payment for billboards, but to this date, we have no authority to proceed with same.

As soon as the appropriate authorization to make payment has been given, Mr. Delaney and/or his representatives will contact you.

Very truly yours,

LESTER G. FINCH
Lester G. Finch
Supervisor - Area II
Bureau of Property and Relocation

LGF:jl

Opinion—April 13, 1987—New Jersey Superior Court, Appellate Division.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

Original Filed
Apr 13 1987
John J. Musewicz, Esq.
Acting Clerk

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3688-85T8

WESLEY K. BELL, t/a Wes Outdoor Advertising Co.,

Plaintiff-Respondent, and Cross-Appellant,

v.

TOWNSHIP OF STAFFORD, a Municipality in the County of Ocean, State of New Jersey,

Defendant-Appellant, and Cross-Respondent,

and

ROBERT H. MEARS, Construction Official of the Township of Stafford, and the County of Ocean,

Defendants.

Argued: March 23, 1987 - Decided Apr 13 1987

Before Judges Bilder, Gaynor and Scalera.

Opinion—April 13, 1987.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County.

Thomas E. Monahan, argued the cause for appellant and cross-respondent (Gilmore and Monahan, attorneys, J. Mark Mutter, on the brief).

Wesley K. Bell, *pro se*, argued the cause as respondent and cross-appellant.

PER CURIAM

This appeal stems from a dispute between Wesley K. Bell, t/a Wes Outdoor Advertising Co., (Bell) and the Township of Stafford, (Stafford) relating to an ordinance which prohibits the building and maintenance of billboards for off-site advertising throughout the municipality. Three separate billboards owned by Bell and located along Route 72 in the municipality have been affected by that ordinance and certain condemnation actions taken by the New Jersey Department of Transportation (DOT). After a bench trial, the judge ruled that the ordinance in question was constitutionally valid and that it legitimately prohibited Bell from rebuilding two of the billboards. However, he concluded that Bell could legally rebuild and maintain the third one as a nonconforming use. Stafford has appealed from so much of that order which permits Bell to rebuild and maintain the third billboard. Bell cross appeals contending that the ordinance is unconstitutional and that, for various reasons, the trial judge erred in upholding Stafford's action in prohibiting him from maintaining the other two billboards. In view of our determination that the ordinance is unconstitutional, we find it unnecessary to reach any of the other arguments advanced by the parties.

Only a brief recitation of the underlying events are necessary to understand our disposition of this matter. During the latter half of the 1960's Wesley K. Bell obtained title to two plots of land located along Route 72 in Stafford identified as Block 145A, Lot 26A (Lot 26A) and Block 120, Lot 8 (Lot 8). Thereafter, Bell constructed a number of billboards on these properties. During the early 1970's the DOT sought to condemn a portion of Lot 26A in order to widen Route 72, a State highway which passes through Stafford. Bell unsuccessfully challenged that condemnation action in the state and federal courts.

On September 30, 1983 agents of the DOT entered upon Lot 26A and cut down the billboard located thereon. At the same time, the DOT mistakenly tore down the billboard located on Lot 8 even though this land had not been condemned by the State. Bell then disassembled the billboards and removed them to his warehouse for repairs. In May 1984 Bell reconstructed the billboard on the portion of Lot 26A which the State had not taken in the condemnation proceedings, despite an order by Stafford not to do so.

On May 8, 1984 Bell entered into a contract with Lewis and Jeanne Raupp to purchase a plot of land identified as Block 158A, Lots 114 and 119 (Block 158A) which contained a billboard thereon. On May 18, 1984 Bell purchased another billboard which he intended to relocate to the property he had just purchased from the Raupps. Thereafter, he filed an application with Stafford seeking approval of the relocation.

On May 30, 1984, Stafford filed an action in the Chancery Division, claiming that Bell needed a building permit in order to maintain the billboard on Lot 26A.

The judge who heard the matter held that a new building permit was required notwithstanding the fact that Bell had obtained a building permit at the time that the original billboard had been constructed on Lot 26A. During the first week of June 1984, Bell also began to reconstruct the billboard which had been improperly torn down by the DOT on Lot 8. Stafford's construction code official, Robert Mears (Mears), ordered Bell to stop work on this billboard until he obtained a building permit. Stafford then filed a second suit and the same judge again determined that a building permit was required in order to reconstruct the billboard on Lot 8.

As a result of that litigation, Bell filed applications for building permits on Lots 26A and 8. In the meantime, Stafford had amended its Ordinance 77-22, which had regulated the use of billboards in the Township, by passing Ordinance No. 84-35,[1] which sought to prohibit all billboards for off-premises advertising within any zoning district of the Township. On July 2, 1984 Bell received written notices denying his application for building permits on Lots 26A and 8 and his application to relocate the billboard from Block 181, Lot 4 to Block 158A, Lots 114 and 119. Among other reasons, the applications purportedly were denied because billboards were prohibited under Ordinance 84-35 within any zoning district of the municipality.

Thereafter, Bell filed the instant complaint in lieu of prerogative writs against Stafford seeking a declaratory judgment that Ordinance 84-35 was inapplicable to him;

[1] Ordinance No. 84-35 was subsequently amended by Ordinance No. 85-68 for the purpose of curing certain publication defects in 84-35 and also to incorporate 84-35 into the overall municipal zoning ordinance. For purposes of simplicity and clarity we will refer to the ordinance in question as 84-35.

that he had the right to repair and re-erect the billboards on Lots 26A and 8, to relocate the billboard from Block 181 to Block 158A as a nonconforming use under the original ordinance; that Stafford be ordered to issue the necessary building permits; that Ordinance 84-35 was unconstitutional on its face and that Ordinance 84-35 was null and void for failure to properly publish its adoption pursuant to *N.J.S.A.* 40:49-2.

The matter was tried before a second judge who held that Ordinance 84-35 was constitutionally valid and legally adopted and that Bell could not legally re-erect a billboard on Lot 26A, or relocate the billboard from Block 181 to Block 158. However, he also held that the "negligence or wrongdoing" of the DOT in cutting down the billboard on Lot 8 was "imputed" to Stafford and that Bell was therefore entitled to re-erect a billboard on that lot as a nonconforming use.

As previously noted, we deem it necessary to address only the issue of the constitutionality of the ordinance in question because we are satisfied that it is facially invalid rendering moot the remaining issues raised by the parties.

Section 2 of Stafford Ordinance No. 84-35 provides:

> *Billboards* - Billboards, signboards and off-premises advertising signs and devices are prohibited within any zoning district of the Township.

The trial judge ruled this ordinance to be constitutional. In so doing he stated:

> I'm satisfied on the Constitutional argument that the present ordinance does meet the requirements of the Constitutional provisions in that it is a general

> ban on a particular form, really a business, rather than of a speech. The use of off-site advertising is an area which can certainly be regulated by a Township and its an area which they have chosen to regulate by disallowance. That, I believe, meets the Constitutional test; therefore, the fact that the billboards were from time to time used for political purposes, does not somehow convert them into, or raise them to a constitutional level. Its sort of like saying that that gas station we were talking about, that's a non-conforming use, was plastered up with Vote Republican signs, and therefore had some right to continue, be restored because it was utilized for political advertising as opposed to commercial.

Bell contends that the trial court erred in so ruling since the ordinance constitutes a total prohibition against billboards and signs. Relying almost exclusively on *Metromedia, Inc. v. San Diego,* 453 *U.S.* 490, 69 *L.Ed.* 2d 800 (1981), Stafford responds that the ordinance in question is a valid exercise of the police powers of local government. More specifically, it argues that the ordinance furthers the legitimate governmental interests of aesthetics and traffic safety. At the outset we note that the record is almost completely devoid of any evidence concerning this issue. At oral argument we inquired of Stafford's counsel why this was so. The response was that Stafford has relied upon the legal presumption that the ordinance was valid and that Bell had the burden of establishing its unconstitutionality. Since Bell had not introduced any evidence directed to the issue, Stafford chose to rest on the application of that principle. Stafford's reliance upon this principle, however, was misdirected. Recently, in *Zelinsky v. Zoning Bd. of Adj. of Verona,* _____ *N.J.* _____ (1987)

our Supreme Court expressly recognized that when an ordinance infringes upon a fundamental constitutional right the burden shifts to the municipality to establish the objectives of the ordinance in question.

A number of recent decisions by both the United States Supreme Court and our own Supreme Court provide additional support for our conclusion that the ordinance is facially invalid and, in the absence of any contrary evidence from Stafford, therefore unconstitutional. In *Schad v. Borough of Mt. Ephraim*, 452 *U.S.* 61, 68 *L.Ed.* 2d 671 (1981) the Supreme Court struck down an unconstitutional a municipal zoning ordinance which prohibited all live entertainment, including nude dancing, in any establishment within the Borough of Mount Ephraim. There, Justice White, writing for the Court, articulated the standard of review to be applied where a zoning law infringes upon a protected fundamental right such as free speech: "it must be narrowly drawn and must further a sufficiently substantial government interest." *Id.* at 680. Thus, not only must a court assess the substantiality of the governmental interests asserted but it also must determine whether those interests could be served by means that would be less intrusive on free speech. *Id.* at 681.

The *Schad* decision similarly involved a municipality's attempt at total prohibition of a protected form of speech. It articulated the standard of review to be applied where an ordinance infringes upon a fundamental right, namely, that the ordinance must further a sufficiently substantial government interest. Lastly, it established that a municipality has the burden of proving that such an ordinance complies with the applicable standard.

Stafford insists that the case of *Metromedia, Inc. v. San Diego, supra,* is supportive of the trial judge's conclusion here that the ordinance passes constitutional matter. We disagree. *Metromedia* involved a San Diego ordinance which essentially prohibited "outdoor advertising display signs." Under the ordinance scheme onsite commercial advertising was permitted, but other commercial advertising and noncommercial communications using billboards were prohibited unless included in one of 12 exceptions provided in the ordinance. 69 *L.Ed.* 2d at 806-807. Appellants were companies engaged in the outdoor advertising business in San Diego who owned a substantial number of billboards located in commercial and industrial zones within the city. While the billboards were used primarily for commercial advertising, they were also used to communicate a broad range of noncommercial social and political messages. The California Supreme Court upheld the validity of the ordinance because it believed that the two purposes behind the ordinance, traffic safety and aesthetics, were within the city's legitimate interests and that "the ordinance was 'a proper application of municipal authority over zoning and land use for the purpose of promoting the public safety and welfare.' " *Id.* at 808.

The United States Supreme Court struck down the ordinance as unconstitutional. While six members of the Court agreed that the ordinance was unconstitutional, it was unable to form a majority concerning the precise rationale. Justice White, writing the plurality opinion, considered separately the effect of the San Diego ordinance on commercial and noncommercial speech.[2]

[2] The Township of Stafford relies exclusively on the plurality's discussion of the ordinance with respect to commercial speech. However, the plurality's ultimate decision was not based on this aspect of the ordinance.

Initially, they concluded that the ordinance did not impose constitutionally invalid restrictions on commercial speech.[3] *Id.* at 818. The plurality proceeded to address the ordinance's general ban on signs carrying noncommercial advertising. They observed that while the use of onsite billboards to carry commercial messages was freely permitted under San Diego's ordinance, the use of identical billboards to carry noncommercial messages was generally prohibited. The plurality concluded that this was constitutionally impermissible. Lastly, the plurality rejected the City's argument that the ordinance was a reasonable "time, place and manner" restriction because adequate alternative channels were not available to parties wishing to express social or idealogical views in an inexpensive and wide reaching manner. Furthermore, the ordinance distinguished between permissible and nonpermissible signs at a particular location solely by reference to their content. *Id.* at 820.

Justice Brennan, joined by Justice Blackmun, concurred with the plurality that the ordinance was unconstitutional. Although Justice Brennan agreed that billboards are a medium of communication warranting First Amendment protection, he took exception to the plurality's conclusion that the issue of total prohibition

[3] The plurality applied the following four part test established in *Central Hudson v. Public Service Comm'n*, 447 *U.S.* 557, 563-566 (1980).

> (1) The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading. A restriction on otherwise protected commercial speech is valid only if it (2) seeks to implement a substantial government interest, (3) directly advances that interest, and (4) reaches no further than necessary to accomplish the given objective. [69 *L.Ed.* 2d at 815].

of outdoor advertising was not before the court. *Id.* at 824-825. Relying on *Schad v. Mount Ephraim, supra*, he analyzed the ordinance under the test applicable to content neutral prohibitions of particular media of communication: whether there was a substantial government interest asserted which would support the ordinance and whether those interests could be served by means that would be less intrusive on free speech. Noting that the City had the burden of establishing that its interest in creating "an aesthetically pleasing environment was substantial and genuine," Justice Brennan concluded that the ordinance was unconstitutional since the City had "failed to provide adequate justification for its substantial restriction on protected activity."[4] *Id.* at 827. He also reasoned that the City had failed to come forward with evidence to support its contention that billboards actually impair traffic safety. Furthermore, the ordinance was not drawn sufficiently narrow to accomplish the traffic safety goal, nor had the City produced any evidence to indicate that the elimination of billboards was part of an overall plan to improve the physical appearance of the City. *Id.* at 829-831.

In *State v. Miller*, 83 *N.J.* 402 (1980) a case decided a year before *Metromedia, supra*, the New Jersey Supreme Court similarly struck down as unconstitutional a municipal sign ordinance. The ordinance permitted only the following types of signs in residential zones within the Borough of Milltown:

---

[4] Justice Brennan noted, however, that there might be cases in which a municipality could justify a total prohibition on billboards under its zoning powers. *Id.* at 831.

> (1) decorative name and address plates; (2) "for sale" or "for rent" signs and signs identifying firms doing work on the premises; (3) signs maintained by the local, state of federal government; (4) identification signs for churches, schools, etc.

In addition, the ordinance required a permit for all signs in a residential zone exceeding six square feet. In 1976 defendant erected a four by eight foot sign on his front yard which carried a message "concerning a matter of public interest." Thereafter, he was convicted of violating the municipal sign ordinance.

Defendant's convictions were reversed and the ordinance was held unconstitutional. Justice Clifford, writing for the Court, reasoned that the ordinance's restrictions on the place and manner of defendant's speech were so severe as to amount to an absolute ban on political speech. Specifically, the Court concluded that "adequate alternative means of political communication are not available to owners who are precluded from putting signs and posters in the yard." *Id.* at 413.

After striking the ordinance down, the Court provided the following observations on the constitutionally permissible scope of sign regulation: first, "the restriction on signs must be tied to a compelling municipal interest as well as to the uses permitted in a given zone"; second, the ordinance may permissibly distinguish between commercial and political speech; and lastly, limitations on the size of a sign may be imposed as long as they are not determined in an arbitrary manner. *Id.* at 414-416. *Cf. City Council v. Taxpayers For Vincent*, _____ *U.S.* _____, 80 *L.Ed.* 2d 772 (1984).

In *Zelinsky v. Zoning Bd of Adj. of the Borough of Verona*, _____ *N.J.* _____ (1987), (slip opinion) our

Supreme Court considered the validity of a local zoning ordinance that required every one-family dwelling to have a minimum of two off-street parking spaces, one of which had to be in a garage. The Court upheld the validity of the regulation. During the course of the opinion it commented on the impact of the *Miller* case when faced with an attack on a municipal ordinance:

> We also disagree that the ordinance must articulate tangible, specific objectives promoted by the ordinance in order to be valid. Neither *State v. Miller*, 83 *N.J.* 402, 414 (1980), nor *Taxpayers Association of Weymouth Township v. Weymouth Township, supra*, 80 *N.J.* at 21, mandates such an articulation as a premise of validity. In *State v. Miller, supra*, a municipal ordinance restricted use, size, and placement of signs on residential properties. *Given the first amendment implications*, the Court applied strict scrutiny analysis and *the burden shifted to the municipality to justify the means chosen to satisfy a compelling municipal interest.* 83 *N.J.* at 414. The Court required the municipality to "demonstrate more than a mere desire to preserve property values. It [had to] show that the particular restrictions on signs in fact relate[d] to the stated goal." *Id.* at 415. The Court, however, made no mention of the need to articulate specific goals in an ordinance, and in reaching its decision the Court merely relied upon the goals argued before the Court. *See also Taxpayers Ass'n of Weymouth Township, supra*, 80 *N.J.* 6 ("Declaration of Policy" not necessary to sustain the ordinance.)

> *Consequently, it is only when a fundamental right is infringed that the burden is upon the municipality to articulate the objectives of an ordinance.* Moreover, that articulation need not be in the language of the ordinance; rather, the municipality may offer testimony at a court hearing held to decide the constitutionality of the ordinance. Because in this case there is no fundamental right infringed, strict scrutiny analysis is inapplicable. To sustain a constitutional attack, plaintiff must rule out any set of facts that reasonably supports the ordinance. [(slip opinion at 9-10) (emphasis supplied)].

Here, even a cursory reading establishes that the Stafford ordinance facially infringes upon the constitutionally guaranteed right of free speech. As such Stafford was required to shoulder the burden to "justify the means chose[n] to satisfy a compelling municipal interest." *State v. Miller*, 83 *N.J.* at 414. Stafford, however, failed to come forward with such evidence and there was no other indicia from which the trial judge could have reasonably determined that this broadly drawn ordinance met the applicable standards previously discussed. Furthermore, the trial judge incorrectly and rather summarily observed only that the ordinance was constitutionally valid since it was content neutral, that is, it prohibited all billboards regardless of the message it carried.

By our declaration we do not suggest that an ordinance may never pass constitutional muster simply because it affects a constitutionally protected medium of speech, *i.e.*, billboards. However, as previously discussed, *Metromedia*, *Miller* and *Zelinski* require that competent evidence be supplied to assist the court in its inquiry

whether the ordinance is sufficiently narrow and furthers a substantial government interest. This is particularly applicable to a municipality such as Stafford which provides for a wide variety of zoning districts ranging from complete preservation areas to highway commercial and industrial zoning districts. *Cf. United Advertising Corp. v. Metuchen*, 42 *N.J.* 1 (1964); *United Advertising Corp. v. Borough of Raritan*, 11 *N.J.* 144, 151-152 (1952).

In view of Stafford's failure to justify the passage of such a broad and encompassing ordinance, we are constrained to declare it facially unconstitutional. *Zelinsky, supra.* Again, we do not suggest in any sense that Stafford is prohibited from fashioning a similar but more restricted ordinance which may satisfy the constitutional imperatives elucidated in *Schad, Metromedia*, and *Miller* in light of the problems peculiar to that municipality. Our only determination here is that the ordinance in question facially infringes on a fundamental right without sufficient support in the record to justify its validity. *See generally,* Blumoff, "After *Metromedia:* Sign Control And The First Amendment," 28 *St. Louis Univ. L.J.* 171 (1984).

In light of this determination the other issues raised by the parties are rendered moot or academic in nature and we elect not to address them. Reversed and remanded for entry of a judgment not inconsistent with this opinion. No costs.

I hereby certify that the foregoing is a true copy of the original on file in my office.

JOHN J. MUSEWICZ
Acting Clerk

Opinion—December 11, 1987—New Jersey Superior Court, Appellate Division.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-5538-86T6

ORIGINAL FILED
Appellate Division
Dec 11 1987
Jack G. Trubenbash
Clerk

WESLEY K. BELL, t/a Wes Outdoor Advertising Co.,

Plaintiff-Appellant,

v.

TOWNSHIP OF STAFFORD, a Municipality in the County of Ocean, State of New Jersey,

Defendant-Respondent,

and

ROBERT H. MEARS, Construction Official of the Township of Stafford, and THE COUNTY OF OCEAN,

Defendants.

Submitted: December 2, 1987—Decided Dec 11, 1987

Before Judges Furman and Scalera.

Opinion—December 11, 1987.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County.

Wesley K. Bell, *pro se.*

Gilmore and Monahan, attorneys for respondent (Carl A. Bergmann, on the letter brief).

PER CURIAM

Plaintiff appeals from an order which effectively denied to him any allowances for consequential damages, costs and "legal fees" following a reversal by this court of the prior judgment of the trial court against him.

As outlined in our previous opinion involving the original appeal of this matter, the action stems from a dispute between the plaintiff and the Township relating to an ordinance which sought to prohibit the building and maintenance of all billboards for off-site advertising throughout the municipality. We concluded in that appeal that the ordinance was facially invalid as an unconstitutional infringement on the right to free speech. See *Bell v. Township of Stafford,* A-3688-85T8 decided on April 13, 1987. In light of that result we declined to address the other issues raised by the parties relating to the specific reliefs which may have followed if the trial judge had not upheld the validity of the ordinance.

After remand and while the matter was pending further action by the trial court, the Supreme Court granted the Township's petition for certification on June 9, 1987. Notwithstanding that, the trial judge undertook to enter an order consistent with what he perceived to be our mandate.

Pursuant thereto, the plaintiff sought to have a plenary hearing conducted to permit him to establish his entitlement to consequential damages such as loss of income in addition to reimbursement for lawyers' and *pro se* fees following our declaration that the ordinance in question was unconstitutional. The trial judge summarily refused to consider the issue of "counsel fees, damages, costs or the like" since he perceived such issues as beyond our mandate. Instead he executed an order dated July 1, 1987 simply declaring the two ordinances in question to be unconstitutional. This appeal is from the effect of that order insofar as it denies plaintiff's application for consideration of an award for those items.

In our judgment, the trial judge erred in refusing to hear arguments concerning the scope of relief implicated by plaintiff's original complaint and our reversal. Had he done so, he could have crystallized the issues relating to each of the claims made by plaintiff following our remand and elucidated why each was not cognizable. If any of the items were legitimately cognizable he could have conducted a plenary or other appropriate type hearing and made the necessary findings for a meaningful review. *R.* 1:7-4.

Normally we would reverse and order the conduct of such proceedings. However, in light of the fact that our original decision in A-3688-85T8 is presently under review by the Supreme Court, we will direct that this collateral issue be remanded and exercise our jurisdiction to *sua sponte* enter a stay of any further proceedings until disposition of that pending Supreme Court review. *R.* 2:9-5(b); *R.* 2:10-5.

Opinion—December 11, 1987.

Reversed and remanded but further action is stayed pending a determination of the pending appeal before the Supreme Court. Thereafter further proceedings may be conducted not inconsistent with such disposition and, to the extent necessary, this opinion.

I hereby certify that the foregoing is a true copy of the original on file in my office.

JACK G. TRUBENBASH
Clerk of the Appellate Division

106 – DEED – QUITCLAIM
IND OR CORP — Plain Language

ADGRVST — 1

Copyright© 1982 By ALL STATE LEGAL SUPPLY CO
One Commerce Drive, Cranford, N.J. 07016

COUNTY OF OCEAN
CONSIDERATION 2,000.00
REALTY TRANSFER FEE 7.00
DATE 7-7-86 BY BM

DEED

This Deed is made on May 30, 1986,

BETWEEN ELMER J. AKER and RUTH AKER, his wife,

EXIBIT #38a

whose address is 59 North Lakeshore Drive, Manahawkin, New Jersey 08050 referred to as the Grantor,

AND WESLEY K. BELL t/a WES OUTDOOR ADVERTISING CO.

whose post office address is State Highway No. 72, Manahawkin, New Jersey 08050 referred to as the Grantee.
Post Office Box 538, Manahawkin, NJ 08050
The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

Transfer of Ownership. The Grantor grants and conveys (transfers ownership of) the property described below to the Grantee. This transfer is made for the sum of Two Thousand ($2,000.00) and no/100 Dollars.

The Grantor acknowledges receipt of this money.

Tax Map Reference. (N.J.S.A. 46:15-2.1) Municipality of Stafford Township
Block No. Lot No. Account No.

[X] No property tax identification number is available on the date of this Deed. (Check box if applicable.)

Property. The property consists of the land and all the buildings and structures on the land in the Township of Stafford
County of Ocean and State of New Jersey. The legal description is:

Bounded on the North by Manahawkin Bay, on the East and Southeast by Salmon's Island Thoroughfare, on the South and Southwest by the Southern line of Sonman's Patent as it extends to Manahawkin Bay and on the West and Northwest by Manahawkin Bay.

Being part and parcel of Bonnet Islands.

Being the same premises conveyed by Quit Claim Deed from Bonnett Gunning Association, a New Jersey corporation, to Elmer J. Cranmer and others, recorded in the Ocean County Clerk's Office in Deed Book 885 at page 423. The said Elmer J. Cranmer departed this life December 28, 1940 leaving his entire estate by Will to his widow, Jennie E. Cranmer, which Will was admitted to probate and is found in Will Book 44 at page 237 in the Ocean County Surrogate's Office. The said Jennie E. Cranmer departed this life March 30, 1944 leaving her entire estate by Will found in the Ocean County Surrogate's Office in Will Book 48 at page 331, said Will leaving her entire estate to one of the Grantors above named, Elmer J. Aker.

Prepared by: Richard J. Stockton
(N.J.S.A. 46:15-13)

Type of Deed. This Deed is called a Quitclaim Deed. The Grantor makes no promises as to ownership or title, but simply transfers whatever interest the Grantor has to the Grantee.

Signatures. The Grantor signs this Deed as of the date at the top of the first page. If the Grantor is a corporation, this Deed is signed and attested to by its proper corporate officers and its corporate seal is affixed.

Witnessed or Attested by:

Elmer J. Aker (Seal)
ELMER J. AKER

Ruth Aker (Seal)
RUTH AKER

STATE OF NEW JERSEY, COUNTY OF OCEAN SS.:
I CERTIFY that on May 30, 1986,

ELMER J. AKER and RUTH AKER, his wife, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed this Deed;
(b) signed, sealed and delivered this Deed as his or her act and deed; and
(c) made this Deed for $ [illegible] as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5.)

Prepared by:

(Print name and address signature)

N.J.S.A. 46:15-13 (Print signer's name below signature)
RICHARD J. SHACKLETON
Attorney at Law of the
State of New Jersey

LINDA B. STONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 6, 1987

STATE OF NEW JERSEY, COUNTY OF SS.:
I CERTIFY that on , 19 ,

personally came before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the secretary of the corporation named in this Deed;
(b) this person is the attesting witness to the signing of this Deed by the proper corporate officer who is the President of the corporation;
(c) this Deed was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
(d) this person knows the proper seal of the corporation which was affixed to this Deed;
(e) this person signed this proof to attest to the truth of these facts; and
(f) the full and actual consideration paid or to be paid for the transfer of title is $
(Such consideration is defined in N.J.S.A. 46:15-5.)

Signed and sworn to before me on , 19 .

(Print name of attesting witness below signature)

Prepared by:

N.J.S.A. 46:15-13 (Print signer's name below signature)

153a

PC 012—Quitclaim deed statutory deed language.
ind. or corp. 5-83

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Julius Blumberg, Inc., Publisher, NYC 10013

Consult your Lawyer before signing this deed — it has important legal consequences.

Deed

COUNTY OF OCEAN
CONSIDERATION 1,000.00
REALTY TRANSFER FEE 3.50
DATE 2-3-86 BY gs

Date **This Deed** is made on June 13th 1986 between

Parties

Grantor
Full name(s) and post office address
ROGER M. CRAMER
of #5 Hillard Drive
Manahawkin, New Jersey 08050

EXIBIT #39a

Grantee
Full name(s) and post office address
WESLEY K. BELL t/a WES OUTDOOR ADVERTISING CO.
of 188 Route 72 - P.O. Box 538
Manahawkin, New Jersey 08050

Grantee.

(The words "Grantor" and "Grantee" include all Grantors and all Grantees under this Deed.)

Consideration

In return for the payment to them of One Thousand Dollars Dollars ($1,000.00),

Conveyance

the Grantor grants and releases to the Grantee all of the claims of the Grantor upon the land located in the Township of Stafford County of Ocean and State of New Jersey, specifically described as follows:

Description of Land

Bounded on the North by Manahawkin Bay, on the East and Southeast by Salmon's Island Thoroughfare, on the South and Southwest by the Southern Line of Sonman's Patent as it extends to Manahawkin Bay and Being part and parcel of Bonnet Islands.

Being the same premises conveyed by Quit Claim Deed from Bonnett Gunning Association, a New Jersey Corporation, to Fred G. Steelman and Nida B. Steelman, his wife and Others, Recorded in the Ocean County Clerks office in Deed Book 885 at Page 423.

The said Fred G. Steelman departed this life on March 15th 1950 leaving his entire Estate by Will to his Widow, Nida B. Steelman which Will was admitted to Probate and is found in Will Book File #49419 Vol. 13 Page 357 Blk. 3 in the Monmouth County Surrogates Office. The said Nida B. Steelman departed this life February 25th 1956 leaving her entire Estate by Will to her brother Nathan M. Letts and her niece Helen Cramer and Joan Amoros and Elaine Cramer daughters of her niece Helen Cramer.

Helen Cramer departed this life on January 22nd 1979 leaving her entire Estate to her Husband Roger M. Cramer. Said Will was admitted to Probate and is found in Will Book Docket #29 Page 490 Case # 57960 in the Ocean County Surrogates Office.

This Deed was prepared by Wesley K. Bell
Print or type name

Wesley K. Bell
Signature

DB4437-0940

Municipal Lot and Block or Account Number

The land is now designated as Lot in Block on the municipal tax map (or as Account No.).

Check box if applicable

[X] No property tax identification number for the land is available at the time of this conveyance.

Receipt of Consideration

The Grantor has received the full payment from the Grantee.

Signature of Grantor

The Grantor signs this Deed on the first date above. If the Grantor is a corporation this Deed is signed by its corporate officers and its corporate seal is affixed.

Signed, sealed and delivered in the presence of or attested by:

Roger M. Cramer SEAL

Roger M. Cramer

Helen C. Lewandowski SEAL

HELEN C. LEWANDOWSKI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 9/89

CERTIFICATE OF ACKNOWLEDGMENT BY INDIVIDUAL

State of New Jersey, County of

I am a

an officer authorized to take acknowledgments and proofs in this State. I sign this acknowledgment below to certify that it was made before me.

On 13th June, 1986, ROGER M. CRAMER

appeared before me in person. *(If more than one person appears, the words "this person" shall include all persons named who appeared before the officer and made this acknowledgment).* I am satisfied that this person is the person named in and who signed this Deed. This person acknowledged signing, sealing and delivering this Deed as this person's act and deed for the uses and purposes expressed in this Deed.

This person also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, §1(c), is $ 4,000.00

Helen C. Lewandowski
Officers signature. Print, stamp or type name and title directly beneath.

HELEN C. LEWANDOWSKI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 9/89

CORPORATE PROOF BY THE SUBSCRIBING WITNESS

State of New Jersey, County of

I am a

an officer authorized to take acknowledgments and proofs in this State.

On , 19 ,

(from now on called the "Witness") appeared before me in person. The Witness was duly sworn by me according to law under oath and stated and proved to my satisfaction that:

1. The Witness is the Secretary of the Corporation which is the Grantor in this Deed.
2. the officer who signed this Deed, is the President of the Corporation (from now on called the "Corporate Officer").
3. The making, signing, sealing, and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.
4. The Witness knows the corporate seal of the Corporation. The seal affixed to this Deed is the corporate seal of the Corporation. The seal was affixed to this Deed by the Corporate Officer. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, §1(c), is $

Sworn to and signed before me on the date written above.

Witness: sign above and print or type name below.

Officers signature. Print, stamp or type name and title directly beneath.

M 912—Quitclaim deed statutory deed language. ind or corp 5-83

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Julius Blumberg, Inc., Publisher, NYC 10013

Consult your Lawyer before signing this deed — it has important legal consequences.

Deed

COUNTY OF OCEAN
CONSIDERATION 1,000.00
REALTY TRANSFER FEE 3.50
DATE 2-8-86 BY JS

Date

This Deed is made on June 21st. 1986 between

Parties

Grantor
Full name(s) and post office address

JOAN I. CRAMER a/k/a (JOAN AMOROS)
286 B Colts Neck Road
Freehold, New Jersey 07728

EXIBIT #40a

Grantee
Full name(s) and post office address

WESLEY K. BELL t/a WES OUTDOOR ADVERTISING CO.
of 188 Route 72 - P. O. Box 538
Manahawkin, New Jersey 08050

Grantee.

(The words "Grantor" and "Grantee" include all Grantors and all Grantees under this Deed.)

Consideration

In return for the payment to them of One Thousand Dollars Dollars ($ 1,000.00),

Conveyance

the Grantor grants and releases to the Grantee all of the claims of the Grantor upon the land located in the Township of Stafford County of Ocean and State of New Jersey, specifically described as follows:

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Being the same premises conveyed by Quit Claim Deed from Bonnett Gunning Association, a New Jersey Corporation, to Fred G. Steelman and Nida B. Steelman, his wife and Others, Recorded in the Ocean County Clerks office in Deed Book 885 at Page 423.

The said Fred G. Steelman departed this life on March 15th 1950 leaving his entire Estate by Will to his Widow, Nida B. Steelman which Will was admitted to Probate and is found in Will Book File #49419 Vol. 13 Page 357 Blk. 3 in the Monmouth County Surrogates Office. The said Nida B. Steelman departed this life February 25th 1956 leaving her entire Estate by Will to her brother Nathan M. Letts and her niece Helen Cramer and Joan Amoros and Elaine Cramer daughters of her niece Helen Cramer.

Joan Amoros is now divorced and is known as Joan I. Cramer.

This Deed was prepared by Wesley K. Bell
Print or type name

Wesley K. Bell
Signature

OB4437-0943

Municipal Lot and Block or Account Number

The land is now designated as Lot in Block on the municipal tax map (or as Account No.).

Check box if applicable

☒ No property tax identification number for the land is available at the time of this conveyance.

Receipt of Consideration

The Grantor has received the full payment from the Grantee.

Signature of Grantor

The Grantor signs this Deed on the first date above. If the Grantor is a corporation this Deed is signed by its corporate officers and its corporate seal is affixed.

Signed, sealed and delivered in the presence of or attested by:

Joan I. Cramer (SEAL)
JOAN I. CRAMER

Helen C. Lewandowski Joan Amoros (SEAL)
JOAN AMOROS

HELEN C. LEWANDOWSKI
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/89

CERTIFICATE OF ACKNOWLEDGMENT BY INDIVIDUAL

State of New Jersey, County of

I am a
an officer authorized to take acknowledgments and proofs in this State. I sign this acknowledgment below to certify that it was made before me.

On June 21st, 1986, Joan I. Cramer a/k/a Joan Amoros

appeared before me in person. *(If more than one person appears, the words "this person" shall include all persons named who appeared before the officer and made this acknowledgment).* I am satisfied that this person is the person named in and who signed this Deed. This person acknowledged signing, sealing and delivering this Deed as this person's act and deed for the uses and purposes expressed in this Deed.

This person also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, §1(c), is $1,000.00

Helen C. Lewandowski
Officers signature. Print, stamp or type name and title directly beneath.

HELEN C. LEWANDOWSKI
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/89

CORPORATE PROOF BY THE SUBSCRIBING WITNESS

State of New Jersey, County of

I am a
an officer authorized to take acknowledgments and proofs in this State.

On , 19 ,
(from now on called the "Witness") appeared before me in person. The Witness was duly sworn by me according to law under oath and stated and proved to my satisfaction that:

1. The Witness is the Secretary of the Corporation which is the Grantor in this Deed.
2. the officer who signed this Deed, is the President of the Corporation (from now on called the "Corporate Officer").
3. The making, signing, sealing, and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.
4. The Witness knows the *corporate* seal of the Corporation. The seal affixed to this Deed is the corporate seal of the Corporation. The seal was affixed to this Deed by the Corporate Officer. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, §1(c), is $

Sworn to and signed before me on the date written above.

Witness sign above and print or type name below.

Officers signature. Print, stamp or type name and title directly beneath.

M 912—Quitclaim deed statutory deed language and or corp 5-83

© 1981 by Arthur S. Horn, a New Jersey attorney
Julius Blumberg, Inc., Publisher, NYC 10018

Consult your Lawyer before signing this deed — it has important legal consequences.

COUNTY OF OCEAN
CONSIDERATION 1,000.00
REALTY TRANSFER FEE 3.50
DATE 2-2-86 BY

Deed

EXIBIT #41a

Date This Deed is made on July 3rd. 1986 between

Parties

Grantor *Full name(s) and post office address*
JEAN E. STEWART
585 Roosevelt Avenue
Manahawkin, New Jersey 08050

Grantee *Full name(s) and post office address*
WESLEY K. BELL t/a WES OUTDOOR ADVERTISING CO.
188 Route 72 - P. O. Box 538
Manahawkin, New Jersey 08050

Grantee.

(The words "Grantor" and "Grantee" include all Grantors and all Grantees under this Deed.)

Consideration

Conveyance

In return for the payment to them of One Thousand Dollars Dollars ($ 1,000.00), the Grantor grants and releases to the Grantee all of the claims of the Grantor upon the land located in the Township of Stafford County of Ocean and State of New Jersey, specifically described as follows:

Description of Land

Bounded on the North by Manahawkin Bay, on the East and Southeast by Salmon's Island Thorofare, on the South and Southwest by the Southern Line of Sonman's Patent as it extends to Manahawkin Bay and on the West and Northwest by Manahawkin Bay.

Being part and parcel of Bonnet Islands.

Being the same premises conveyed by Quit Claim Deed from Bonnett Gunning Association, A New Jersey Corporation, to Fred G. Steelman, Nida B. Steelman, Nathan M. Letts and Others, Recorded in the Ocean County Clerks Office in Deed Book 885 at Page 423.

The said Fred G. Steelman departed this life on March 15th 1950, leaving his entire Estate by Will to his Widow, Nida B. Steelman which Will was admitted to Probate and is found in Will Book File #49419 Volumn 13, Page 357 Blk. 3 in the Monmouth County Surrogates Office. The said Nida B. Steelman departed this life February 25th 1956 leaving her entire Estate by Will to her brother Nathan M. Letts and her niece Helen Cramer and Joan Amoros and Elaine Cramer, daughters of her niece Helen Cramer.

The said Nathan M. Letts departed this life leaving his entire Estate by Will to his widow, Kate A. Letts, which Will was admitted to probated and is found in Will Book Docket #18, Page 136, Case #34541 in theOcean County Surrogates Office. The said Kate A Letts departed this life, leaving her entire Estate by Will to her daughter Mildred K. Letts, absolutely and in fee simple. Said Will was admitted to probate and is found in the Office of the Ocean County Surrogate, Docket #18, Case #34541, Reel 26, Page 166.

The said Mildred K. Letts a/k/a Mildred K. Quackenbush departed this life on June 26th 1986 intestate in Volusia County Florida, and her sister Jean E. Stewart is the sole surviving heir, and is the Grantor in this deed.

163a Deed—Steward to Bell

This Deed was prepared by Wesley K. Bell
Print or type name

Wesley K. Bell
Signature

Municipal Lot and Block or Account Number

The land is now designated as Lot in Block on the municipal tax map (or as Account No.).

Check box if applicable

[X] No property tax identification number for the land is available at the time of this conveyance.

Receipt of Consideration

The Grantor has received the full payment from the Grantee.

Signature of Grantor

The Grantor signs this Deed on the first date above. If the Grantor is a corporation this Deed is signed by its corporate officers and its corporate seal is affixed.

Signed, sealed and delivered in the presence of or attested by:

Jean E. Stewart SEAL

Jean E. Stewart

Gina M. Signorelli

SEAL

CERTIFICATE OF ACKNOWLEDGMENT BY INDIVIDUAL

State of New Jersey, County of Ocean

I am a Notary Public of the State of N.J.

an officer authorized to take acknowledgments and proofs in this State. I sign this acknowledgment below to certify that it was made before me.

On July 3, 1986, Jean E. Stewart

appeared before me in person. *(If more than one person appears, the words "this person" shall include all persons named who appeared before the officer and made this acknowledgment).* I am satisfied that this person is the person named in and who signed this Deed. This person acknowledged signing, sealing and delivering this Deed as this person's act and deed for the uses and purposes expressed in this Deed.

This person also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, §1(c), is $ 1000.00

Gina M. Signorelli

Officers signature. Print, stamp or type name and title directly beneath.

CORPORATE PROOF BY THE SUBSCRIBING WITNESS

GINA M. SIGNORELLI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 10/5/86

State of New Jersey, County of

I am a

an officer authorized to take acknowledgments and proofs in this State.

On , 19 ,

(from now on called the "Witness") appeared before me in person. The Witness was duly sworn by me according to law under oath and stated and proved to my satisfaction that:

1. The Witness is the Secretary of the Corporation which is the Grantor in this Deed.
2. the officer who signed this Deed, is the President of the Corporation (from now on called the "Corporate Officer").
3. The making, signing, sealing, and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.
4. The Witness knows the corporate seal of the Corporation. The seal affixed to this Deed is the corporate seal of the Corporation. The seal was affixed to this Deed by the Corporate Officer. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, §1(c), is $

Sworn to and signed before me on the date written above.

Witness: sign above and print or type name below.

Officers signature. Print, stamp or type name and title directly beneath.

M 912—Quitclaim deed statutory deed language ind or corp 5-83

© 1981 by Arthur S. Horn, a New Jersey attorney
Julius Blumberg, Inc., Publisher, NYC 10018

Consult your Lawyer before signing this deed — it has important legal consequences.

COUNTY OF OCEAN
CONSIDERATION 1,000.00
REALTY TRANSFER FEE 3.50
DATE 8-4-86 BY BW

Deed

Date

This Deed is made on July 25th 19 86 between

Parties

Grantor
Full name(s) and post office address

RODGER M. CRAMER II and BETTE CRAMER his wife
Box 1884
KENAI, ALASKA 99611

EXIBIT #42a

Grantee
Full name(s) and post office address

WESLEY K. BELL t/a WES OUTDOOR ADVERTISING CO.
of 188 Route 72 - P. O. Box 538
Manahawkin, New Jersey 08050

Grantee.

(The words "Grantor" and "Grantee" include all Grantors and all Grantees under this Deed.)

Consideration

In return for the payment to them of One Thousand Dollars Dollars ($ 1,000.00),

Conveyance

the Grantor grants and releases to the Grantee all of the claims of the Grantor upon the land located in the Township of Stafford County of Ocean and State of New Jersey, specifically described as follows:

Description of Land

Bounded on the North by Manahawkin Bay, on the East and Southeast by Salmon's Island Thorofare, on the South and Southwest by the Southern Line of Sonman's Patent as it extends to Manahawkin Bay and Being part and parcel of Bonnet Islands.

Being the same premises conveyed by Quit Claim Deed from Bonnett Gunning Association, a New Jersey Corporation, to Fred G. Steelman and Nida B. Steelman, his wife and Others, Recorded in the Ocean County Clerks office in Deed Book 885 at Page 423.

The said Fred G. Steelman departed this life on March 15th 1950 leaving his entire Estate by Will to his Widow, Nida B. Steelman which Will was admitted to Probate and is found in Will Book File #49419 Vol. 13 Page 357 Blk. 3 in the Monmouth County Surrogates Office. The said Nida B. Steelman departed this life February 25th 1956 leaving her entire Estate by Will to her brother Nathan M. Letts and her niece Helen Cramer and Joan Amoros and Elaine Cramer, daughters of her niece Helen Cramer.

Elaine Cramer departed this life on July 1st 1972 leaving her entire Estate to her son, Rodger M. Cramer II. Said Will was admitted to probate and is found in Will Book case # 38918 Dkt.# 20 Page 230 in the Ocean County Surrogates Office.

This Deed was prepared by Wesley K. Bell
Print or type name

Wesley K. Bell
Signature

DB4446-0919

Municipal Lot and Block or Account Number

The land is now designated as Lot in Block on the municipal tax map (or as Account No.).

Check box if applicable

[X] No property tax identification number for the land is available at the time of this conveyance.

Receipt of Consideration

The Grantor has received the full payment from the Grantee.

Signature of Grantor

The Grantor signs this Deed on the first date above. If the Grantor is a corporation this Deed is signed by its corporate officers and its corporate seal is affixed.

Signed, sealed and delivered in the presence of or attested by:

Roger M. Cramer II SEAL
RODGER M. CRAMER II

Bette Cramer SEAL
BETTE CRAMER his wife

CERTIFICATE OF ACKNOWLEDGMENT BY INDIVIDUAL

State of New Jersey, County of Alaska Borough of Kenai

I am a
an officer authorized to take acknowledgments and proofs in this State. I sign this acknowledgment below to certify that it was made before me.

On June July 25, 1986, Rodger M. Cramer and Bette Cramer his wife

appeared before me in person. *(If more than one person appears, the words "this person" shall include all persons named who appeared before the officer and made this acknowledgment).* I am satisfied that this person is the person named in and who signed this Deed. This person acknowledged signing, sealing and delivering this Deed as this person's act and deed for the uses and purposes expressed in this Deed.

This person also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, §1(c), is $ 1,000.00

NOTARY PUBLIC STATE OF ALASKA

Officers signature. Print, stamp or type name and title directly beneath.

My commission exp: 8-13-87

CORPORATE PROOF BY THE SUBSCRIBING WITNESS

State of New Jersey, County of

I am a
an officer authorized to take acknowledgments and proofs in this State.

On, 19,

(from now on called the "Witness") appeared before me in person. The Witness was duly sworn by me according to law under oath and stated and proved to my satisfaction that:

1. The Witness is the Secretary of the Corporation which is the Grantor in this Deed.
2. the officer who signed this Deed, is the President of the Corporation (from now on called the "Corporate Officer").
3. The making, signing, sealing, and delivery of this Deed have been duly authorized by a proper resolution of the Board of Directors of the Corporation.
4. The Witness knows the corporate seal of the Corporation. The seal affixed to this Deed is the corporate seal of the Corporation. The seal was affixed to this Deed by the Corporate Officer. The Corporate Officer signed and delivered this Deed as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness who signed this Deed as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledged that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by this Deed, as such consideration is defined in P.L. 1968, c. 49, §1(c), is $

Sworn to and signed before me on the date written above.

Witness: sign above and print or type name below.

Officers signature. Print, stamp or type name and title directly beneath.

169a

106 – DEED – QUITCLAIM
IND OR CORP – Plain Language

ADGRVST – 1

Copyright© 1982 By ALL STATE LEGAL SUPPLY CO
One Commerce Drive Cranford, N.J. 07016

DEED

EXIBIT #43a

This Deed is made on October 11, , 19 86 .

BETWEEN MARY R. CRANE

whose address is 13 North Union Street, Manahawkin, New Jersey 08050
referred to as the Grantor,

AND WESLEY K. BELL t/a WES OUTDOOR ADVERTISING CO.,

whose post office address is 188 Route 72, P.O. Box 538, Manahawkin, NJ 08050
referred to as the Grantee.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

Transfer of Ownership. The Grantor grants and conveys (transfers ownership of) the property described below to the Grantee. This transfer is made for the sum of TWO THOUSAND DOLLARS ($2,000.00)----------

The Grantor acknowledges receipt of this money.

Tax Map Reference. (N.J.S.A. 46:15-2.1) Municipality of Stafford Township
Block No. Lot No. Account No.

☒ No property tax identification number is available on the date of this Deed. (Check box if applicable.)

Property. The property consists of the land and all the buildings and structures on the land in the Township of Stafford, County of Ocean and State of New Jersey. The legal description is:

Bounded on the North by Manahawkin Bay, on the East and Southeast by Salmon's Island Thoroughfare, on the South and Southwest by the Southern line of Sonman's Patent as it extends to Manahawkin Bay and on the West and Northwest by Manahawkin Bay.

Being part and parcel of Bonnet Islands.

Being the same premises conveyed by Quit Claim Deed from Bonnett Gunning Association, a New Jersey Corporation, to THOMAS H. CRANMER and OTHERS, Recorded in the Ocean County Clerks Office in Deed Book 885 at Page 423.

The said Thomas H. Cranmer departed this life on April 25th 1953 and left his entire Estate to his sister Mabel R. Cranmer by Will recorded in the Ocean County Sorrogates Office in Book 66 Page 380 on June 17th 1953.

Mabel R. Aller (Cranmer the devisee in said Will) departed this life on March 25th 1979 and left her entire Estate to Mary Crane by a Will recorded in the Ocean County Surrogates Office Dkt. #29 Page 133 Case #56529.

Frank A. Buczynski, Jr.

065521
RECORDED
OCEAN COUNTY
CLERKS OFFICE
11:04 AM
OCT 21 1986
M. DEAN HAINES
COUNTY CLERK
TOMS RIVER N.J.

Type of Deed. This Deed is called a Quitclaim Deed. The Grantor makes no promises as to ownership or title, but simply transfers whatever interest the Grantor has to the Grantee.

Signatures. The Grantor signs this Deed as of the date at the top of the first page. If the Grantor is a corporation, this Deed is signed and attested to by its proper corporate officers and its corporate seal is affixed.

Witnessed or Attested by:

Mary R Crane (Seal)
MARY R. CRANE

(Seal)

MARTIN E. SILVERMAN

STATE OF NEW JERSEY, COUNTY OF OCEAN SS.:
I CERTIFY that on OCTOBER 11, 1986,

MARY R. CRANE personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed this Deed;
(b) signed, sealed and delivered this Deed as his or her act and deed; and
(c) made this Deed for $ 2,000.00 as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5.)

Prepared by:

N.J.S.A.46:15-13 (Print signer's name below signature)

(Print name and title below signature)
MARTIN E. SILVERMAN
ATTORNEY AT LAW, NEW JERSEY

STATE OF NEW JERSEY, COUNTY OF SS.:
I CERTIFY that on , 19 ,

personally came before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the secretary of the corporation named in this Deed;
(b) this person is the attesting witness to the signing of this Deed by the proper corporate officer who is the President of the corporation;
(c) this Deed was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
(d) this person knows the proper seal of the corporation which was affixed to this Deed;
(e) this person signed this proof to attest to the truth of these facts; and
(f) the full and actual consideration paid or to be paid for the transfer of title is $ (Such consideration is defined in N.J.S.A. 46:15-5.)

Signed and sworn to before me on , 19 .

(Print name of attesting witness below signature)

Prepared by:

N.J.S.A.46:15-13 (Print signer's name below signature)

EXIBIT 44a

This Lease Replaces Lease of November 27th 1959 which is for
BOOK 2300 PAGE 336
Same Premises
BOOK 2309 PAGE 336
$500.00 Per Year

ADVERTISIN; LEASE

This Agreement, made this 18th day of March 1963, byand between Des Outdoor Adv. Co. as Tenant and MARION H. BROWN as Landlord.

In consideration of the covenants herein set forth, the Landlord leases to the Tenant, so much of the plot of ground located in the Township of Stafford, County of Ocean and State of New Jersey, known and designated as Rt. 72 - South Side in the Community of Bonnet Island Shore as may be necessary for the construction of signs and sign structures and supports thereof measuring approximately 85 feet in length, with the right of the Tenant to maintain, erect, service and illuminate advertisements on such structures for a term of Five year(s) from the date of erection at the annual rent of $500.00 .or $ 2.00 per lineal sign foot payable in equal yearly installments, and the Landlord grants to the Tenant an option to renew this lease perpetually for a like period of time under the same terms and conditions and at the same rental with a like covenant for future renewals of the Lease. Said option to renew may be exercised by the Tenant by tendering to the Landlord the annual rent due.

The Landlord covenants not to permit any other form of advertising structures, advertisments, or bulletins on any other part of said premises and it is of the essence of this Agreement that the Landlord will not, under penalty of damages, lease or permit any sign or signs nearer than 300 feet of either end of the structures of the Tenant. The Landlord will not obstruct the view of the Tenants structures and grants to the Tenant, permission to remove any obstruction to the view of the sign structures, and at the option of the Tenant to trim trees, shrubs, and other growth to keep the view of said signs unobstructed.

The parties hereto understand and agree that any equipment placed upon the land by the Tenant shall be and remain the property of the Tenant, and the same may be removed from the leased premises at any reasonable time after the expiration of this Lease or any renewal thereof.

The Landlord represents and warrants that she is the owner or agent of the premises described herein and that he or she has a full authority of the owner of said premises to make this Lease.

It is expressly understood that neither the Landlord nor the Tenant is bound by stipulations, representations, or agreements not printed or written in this Lease. This Lease shall enure to the benefit of and be binding upon the personal representatives, heirs, successors and assigns of the parties hereto.

This Lease is Payable $200.00 Feb 5th and also $300.00 July 5th of each year

X K Marion H. Brown (L.S.)
Landlord

X Wesley K. Bell (L.S.)
Tenant
Credit & Manager
Mid Atlantic Adv. Co.

STATE OF NEW JERSEY)
SS:
COUNTY OF Ocean)

BE IT REMEMBERED THAT IN THIS 14th dayof March in the year of our Lord, One Thousand Nine Hundred and Sixty-three, before me, the undersigned, a Notary Public of New Jersey, personally appeared Marion H Brown who I am satisfied are the Lessor in the within Lease, to whom I first made known the contents thereof, and thereupon She acknowledged that She signed, sealed & delivered the same as her voluntary act and deed for the uses & purposes therein expressed.

X Jeanne Smith
Notary Public

JEANNE SMITH
NOTARY PUBLIC OF NEW JERSEY
My C... 7, 1965

175a
Lease—Brown to Bell

Wheeler v. Roberts

Eastern District of Kentucky
Filed
Mar 7 1986
At Ashland
Leslie G. Whitmer
Clerk, U.S. District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT

JAMES E. WHEELER, ET AL,

Plaintiffs,

vs.

JOHN C. ROBERTS,
COMMISSIONER OF HIGHWAYS,

Defendant.

Civil Action No. 74-29

JUDGMENT

In conformity with the Memorandum Opinion of even date,

IT IS ORDERED AND ADJUDGED that the Kentucky Billboard Act and regulations promulgated thereunder are unconstitutional on their face.

IT IS FURTHER ORDERED AND ADJUDGED that defendant and his successors be, and they hereby are, enjoined from further enforcing said act and regulations.

This the 7th day of March, 1986.

JOSEPH M. HOOD
Joseph M. Hood
United States Magistrate

Notice is hereby given of the entry of this order or judgment on 3-10-86.

LESLIE G. WHITMER, *Clerk*
By: SHIRLEY A. MIDDLETON, D.C.

Wheeler v. Roberts.

Eastern District of Kentucky
Filed
Mar 7 1986
At Ashland
Leslie G. Whitmer
Clerk, U.S. District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT

JAMES E. WHEELER, ET AL,

Plaintiffs,

vs.

JOHN C. ROBERTS,
COMMISIONER OF HIGHWAYS,

Defendant.

Civil Action No. 74-29

MEMORANDUM OPINION

This action is brought pursuant to 42 U.S.C. §1983. It presents the important question whether the Kentucky Billboard Act, KRS 177.830—177.890, and regulations promulgated thereunder, 603 KAR 3:010, which prohibit plaintiffs from posting a non-commercial message on a leased billboard near an interstate highway offend the Constitution. With the written consent of the parties, the matter has been referred to the undersigned for plenary consideration. 28 U.S.C. §636(c)(1), (2).

Generally, the Kentucky statute and regulations prohibit billboards within 660 feet of an interstate highway with certain exceptions. Among such exceptions are billboards in areas zoned commercial or industrial prior to September 21, 1959, and billboards displaying certain categories of information pertaining to activities conducted at the site of the billboard ("on-site" billboards).

Plaintiffs have attempted to secure permission to erect signs in an area not zoned commercial or industrial prior to September 1959. Permission to erect these signs on which plaintiffs desired to communicate their political, ideological or religious beliefs[1] have been denied because the billboard would not advertise an "on-premise" activity. (Tr. 18 and 167-168).

"On-premise" advertising devices are those devices "that contain a message relating to an activity or the sale of a product on the property on which they are located." 603 KAR 3:010 §2(3). Such devices would include those signs advertising such diverse commercial endeavors as "Bob Evans Restaurants", "Earl F. Smith, D.D.S." and "Eddie Sutton's Wildcat Basketball Camp" would be permitted next to an interstate highway so long as there was a restaurant, dental office or basketall camp doing business "on-premises". However, if "Eddie Sutton's Wildcat Basketball Camp" was being conducted on the campus of the University of Kentucky rather than on the site adjacent to the interstate highway, the same sign would be prohibited.

[1] For example, in one instance, James E. Wheeler wanted to erect a billboard promoting the candidacy of George Wallace for President. (Tr. 17-18.) At another time, Sharon Carmichael (now May) wanted to erect a billboard expressing her dissatisfaction with forced busing. (Tr. 166-167.)

Signs advertising activities not normally considered to be commercial, *viz.*, "Pollard Baptist Church", "Headquarters, American Red Cross of Kentucky" and "Bullitt County Public Library" would be allowed, if those activities were being conducted on property adjacent to the interstate. However, a sign of the same size, shape and color advertising a church, charitable organization or public service facility located on property not contiguous to the interstate could not be erected. 603 KAR 3:010 §2(2).

More importantly, signs containing ideological messages, *see John Donnelly & Sons v. Campbell*, 639 F.2d 6, 9 n. 5 (1st Cir. 1980), *aff'd*, 453 U.S. 916 (1981), would manifestly be affected. Messages such as "Abortion is Murder", "Save the Whales", "No Nukes" and those attempted to be conveyed by the instant plaintiffs are prohibited under the law, even in areas where "on-premises" commercial or other activities can permissibly be advertised. As stated in the *Donnelly* decision, this would appear to be "a peculiar inversion of First Amendment values." 639 F.2d at 16; *see also Metromedia, Inc.*, 453 U.S. at 512-157.

Defendant attempts to excuse the ban on the ground that there are alternative channels of communication available. However, as James E. Wheeler complained, those other forms of mass media are expensive for people of limited means. (Tr. 23-27.) *See Metromedia, Inc.*, 453 U.S. at 516; *Donnelly*, 639 F.2d at 16. Moreover, where, as here, the statute and regulations make distinctions based on the content of signs, the alternative channels argument has no applicability. *Metromedia, Inc.*, 453 U.S. at 515-157.

Accordingly, after trial, it is concluded that the Kentucky Billboard Act and regulations promulgated thereunder are unconstitutional on their face.

A judgment in conformity herewith shall this date be filed.

This the 7th day of March, 1986.

JOSEPH M. HOOD
Joseph M. Hood
United States Magistrate

Deed Date Listing

LIST OF PARCELS

REAL ESTATE PURCHASED AND/OR LEASED BY PLAINTIFF WESLEY K. BELL

Parcel A—Deed 3/1/68

Inman Recorded 3/5/68 Book 2769 Page 207

Parcel B—Deeds

	date	*book*	*page*
Aker	10/31/63	2370	411
Wormeck	11/27/63	2362	282
Price	7/27/64	2444	394
Waddell	12/ 7/66	2651	261
Waddell	9/23/68	2834	1
Keddie	10/11/68	2840	470
Wormeck	9/24/68	2833	496
Meany	11/12/63	2351	498

Parcel C—

Contract of Purchase 1/8/68
with Possession—Recorded Book 2870, at page 192
Deed passed title 4/23/75

Parcels D and E—

Hazelton			
(Lease)	9/27/62	2300	338
Bono (Deed)	6/12/68	2801	227
	and	2872	274
Hazeldon			
(Lease)	9/27/57	2197	136

Deed Date Listing.

Parcels F and G—

Scatchard			
(Lease)	4/15/68	2776	444
(Deed)			
(Deed)	12/30/69	2981	54

Parcel H—Agreement to purchase from FOSTER with possession 12/26/68, Recorded 12/30/68.

Deeded easement, KARL & ACKAWAY, 1/7/72, Book 3187, Page 1.

Permit Denials 1/18/68

(Seal)
STATE OF NEW JERSEY
Department of the Treasury
309 East State Street
30 West Front Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising Tax Bureau

January 18, 1968

Jan M. Schlesinger, Attorney
129 High Street
Mount Holly, New Jersey 08060

Re: App. #18367—New. Rt. 72 n/s 1500 ft. wo the center of Jennings Road
App. #18368—New Rt. 72 s/s 1500 ft. wo the center of Jennings Road
App. #18369—New Rt. 72 s/s 950 ft. wo the center of Jennings Road
App. #18370—New Rt. 72 n/s 650 ft. wo the center of Jennings Road
App. #18371—New Rt. 72 s/s 400 ft. wo the center of Jennings Road
App. #18372—New Rt. 72 on the northwest corner of Jennings Road
App. #18373—New Rt. 72 s/s 700 ft. eo the center line of Jennings Rd.
App. #18374—New Rt. 72 n/s 660 ft. eo the center line of Jennings Rd.
Stafford Twp. Ocean

Permit Denials 1/18/68.

Dear Mr. Schlesinger:

Mr. Bell requested that the rejection letter on his above applications be forwarded to you.

This is to officially notify you that the 8 applications listed above, whose location descriptions are that of the applicant's, cannot be considered for inspection. The primary reason being that the road is not yet built to which the signs are to be visible. A good portion of this proposed new Rt. 72 is impassable and the balance under construction.

Since there is no road, no shoulder and no grading it would be impossible to tell whether any of these locations would be in violation of the Outdoor Advertising Act (Chapter 191, P. L. 1959 as amended by Chapter 93, P. L. 1963).

Under R. S. 54:40-60 we could not determine if: (1) it would be injurious to the property in the vicinity thereof . . . (2) it would endanger the interest of public safety . . . (3) it would impair the visibility of another licensed structure . . ., since the locations are approximately 550 feet apart and their entitled to, according to the applications, 960 linear feet of visibility, (4) it would be in a natural area . . . (6) it would obstruct the view of traffic.

When Mr. Bell submitted these applications, he was forewarned of the conditions mentioned and told that if proper inspections could not be made, they would be rejected and the fees retained. He could then apply via new applications when the road is completed and officially open to the public. To this he agreed verbally in our office.

If I do not hear from you within 10 days, these applications will be considered dead.

Very truly yours,

VINCENT R. STOLOWSKI
Vincent R. Stolowski
State Supervisor

VRS:clp

cc: Wesley Bell
Inspector

Hearing Schedule

(Seal)
STATE OF NEW JERSEY

Department of the Treasury
209 East State Street
20 West Front Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising Tax Bureau

January 25, 1968

Hartman & Schlesinger
429 High Street
Mount Holly, New Jersey 08060

Re: Wes Outdoor Advertising Co.
Applications 18367 through 18374

ATTENTION: Jan M. Schlesinger

Dear Mr. Schlesinger:

Confirming the telephone conversation with your secretary, a hearing is scheduled for Tuesday, January 30th, at 10:30 a. m. in my office.

Very truly yours,

VINCENT R. STOLOWSKI
Vincent R. Stolowski
State Supervisor

VRS:clp

HARTMAN & SCHLESINGER
Jan 29 1968

Permit Denials 1/30/68
January 30, 1968

Hartman & Schlesinger
429 High Street
Mount Holly, New Jersey 08060

Re: hearing concerning disapproved applications 18367 through 18374 on the proposed new Rt. 72

ATTENTION: Jan. M. Schlesinger

Dear Jan:

This will confirm the results of the hearing on January 30, 1968, concerning the above applications.

It has been agreed that the above applications are considered disapproved and the fees will be put into the General Treasury Fund, but the engineers map showing the above applications will be retained in our files and will be given first consideration when the new Rt. 72 is officially opened to the public and the receipt of new applications from Wes Outdoor Advertising.

These new applications, when received, will be inspected to verify their compliance with the law and will be given first consideration over any others received for that area.

If your understanding of the hearing is other than what I have stated above, please advise me within 10 days.

Very truly yours,

Vincent R. Stolowski
State Supervisor

VRS:clp

cc: Chief Inspector
Wes Outdoor Adv.

Refusal of Applications 7/29/68

(Logo)

STATE OF NEW JERSEY

Department of the Treasury
209 E. State Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising
Tax Bureau

July 29, 1968

Senator William T. Hiering
Court House Square
Toms River, New Jersey 08753

Re: Wes Outdoor Advertising Company
9 sign applications on New Route 72
Stafford Twp. Ocean

Dear Senator Hiering:

In answer to your letter of July 23, 1968, regarding the above. It would please me to give you a favorable reply regarding the Wes Outdoor Advertising Company applications, however, in all conscience and with the public's best interest in mind, I cannot honestly process these applications or have them inspected. The main reasons being; Will they be in the best interest of the public? Will they be injurious to the property in the vicinity thereof? Would they create a safety hazard? The answers to these questions can only be gotten when the road is complete, which includes the paved section, shoulders and curbs. These are important because should a business locate on adjacent property the proprietor could very well complain of being blocked, we then use the curb as a measuring point for declaring a setback and in this case, quite probable because I'm sure all businesses will shift from old 72 to the New.

Another moot point is that I believe the Department of Transportation of the State of New Jersey is contemplating the purchase of a 100 foot strip on each side of the New Route 72 for beautification purposes and all these sign locations would be within this area.

On January 30, 1968, a hearing was held in my office concerning 8 Wes Outdoor Advertising Company applications for the same area of New Route 72. Present at the hearing was Wesley Bell, of Wes Outdoor Advertising, with his attorney, Jan M. Schlesinger. The outcome of this hearing was an agreement that the Wes Outdoor Advertising Company would not apply for signs on New Route 72 until it was officially opened to the public. I am taking the liberty of attaching a copy of my letter to Mr. Schlesinger to verify the above statement.

For all the reasons stated herein, I am returning to you the 9 Wes Outdoor applications and his money order in the amount of $144.00 because under Reg. 16:11-4.130, no refund shall be made after an application has been officially filed.

With all respect to you, I regret having taken this negative approach, but I feel that my responsibility lies with the public.

Respectfully yours,

VINCENT R. STOLOWSKI
Vincent R. Stolowski
State Supervisor

VRS:clp

enclosure

Permit Denials 10/15/68

(Logo)

STATE OF NEW JERSEY

Department of the Treasury
209 E. State Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising Tax Bureau

October 15, 1968

Wes Outdoor Advertising Company
P. O. Box 538
Manahawkin, New Jersey 08050

Re: App. #12553 - New Rt. 72 n/s about 660 ft. e/o the center of Jennings Road
App. #12554 - New Rt. 72 s/s about 700 ft. e/o the center of Jennings Road
App. #12555 - New Rt. 72 s/s about 410 ft. w/o the center of Jennings Road
App. #12558 - New Rt. 72 n/s about 650 ft. w/o the center of Jennings Road
App. #12636 - New Rt. 72 s/s about 1000 ft. w/o the center of Jennings Road
App. #12637 - New Rt. 72 n/s about 1320 ft. w/o Jennings Road (cor. of Union Ave.)
App. #12682 - New Rt. 72 s/s about 1510 ft. w/o Jennings Road
App. #12692 - New Rt. 72 n/s about 2210 ft. w/o Jennings Road
App. #12710 - New Rt. 72 s/s about 2275 ft. w/o Jennings Road

Stafford Twp. — Ocean

ATTENTION: Wesley Kenneth Bell, President

Permit Denials 10/15/68.

Dear Mr. Bell:

The above described applications cannot be considered for inspection and, therefore, are hereby considered disapproved.

As agreed by yourself and your attorney, Mr. Jan M. Schlesinger, on January 30, 1968, no applications for the New Rt. 72 would be submitted by you nor considered by our bureau until the road is officially opened to the public, because only then could a proper inspection be made of each location as to:

(a) Would it be injurious to the property in the vicinity thereof?
(b) Would it affect public interest?
(c) Would it affect public safety?
(d) Would it affect visibility of another licensed space?
(e) Would it be in a natural area?

In view of the fact that you have elected to erect signs at locations for which you are now applying, and I refer to application nos. 12637, 12636 and 12558, you are hereby instructed to remove these signs as notified in our letters of September 25, 1968, which are also known as violation nos. 847, 848, 849, 850 and 851.

Very truly yours,

VINCENT R. STOLOWSKI
Vincent R. Stolowski
State Supervisor

VRS:clp

cc: Mr. Faxon, III
Attorney General
Inspector

Notice of Removal 10/21/68

(Logo)

STATE OF NEW JERSEY

Department of the Treasury
209 E. State Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising Tax Bureau

October 21, 1968

292-5001

Hartman & Schlesinger
1 West Main Street
Moorestown, New Jersey 08057

Re: Wes Outdoor Advertising Company
Violation Nos. 846 through 851

ATTENTION: Alfred A. Faxon, III

Dear Mr. Faxon:

In my letter of October 15, 1968, I brought to your attention the fact of conflicting evidence which nulifies your claim for exemption of the above violations.

This is to officially notify you and the Wes Outdoor Advertising Company that the said signs in violation are being scheduled for removal on October 28, 1968, as stated in my original letter of September 25, 1968.

Under R. S. 54:40-57 N. J. S. A., your client will be penalized double the cost of their removal, and further is charged with violating the Outdoor Advertising Act, Sec. 5 (Chapter 191, P. L. 1959 as amended by Chapter 93, P. L. 1963). R. S. 54:40-54 N. J. S. A. definitely states "All persons, firms or corporations, whether required to be licensed or not, before erecting maintaining or using any

advertising structures or other objects for the display of outdoor advertising matter, shall apply for and obtain from the director a permit for the same . . .", thereby subjecting your client, ". . . to a penalty of not less than $50.00 nor more than $200.00 for each offense, . . . Each day of violation shall be deemed to be a separate offense" as provided under R. S. 54:40-65 N. J. S. A.

This notice is without prejudice to any further or additional rights of the State, and is not intended to waive any other liabilities or penalties which may be due the State.

Very truly yours,

VINCENT R. STOLOWSKI
Vincent R. Stolowski
State Supervisor

VRS:clp

cc: Wes Bell
Inspector
Attorney General

Order to Remove Advertising Copy 10/28/68
(Logo)

STATE OF NEW JERSEY

Department of the Treasury
209 E. State Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising Tax Bureau

October 28, 1968

Hartman & Schlesinger
1 West Main Street
Moorestown, New Jersey 08057

Re: Our File
Wes Outdoor Advertising Company
Violation Nos. 846 through 851

ATTENTION: Alfred A. Faxon, III

Dear Mr. Faxon:

This will confirm our telephone conversation of Friday, October 25, 1968.

Upon reviewing the testimony at the hearing held at my office on October 24, 1968, it is agreed that due to hardships which Mr. Bell explained, the Wes Outdoor Advertising Company has until November 12, 1968, to paint copy on violation nos. 846, 849, 850 and 851. This copy must read "this property for sale or lease" and name or phone number or address where the seller can be reached.

The same copy must be placed on violation nos. 847 and 848 first and foremost and since Mr. Bell claimed it only takes 2 days to paint said copy, these locations will be checked on Friday, November 1, 1968.

Order to Remove Advertising Copy 10/28/68.

A report on the above by my field representative will dictate future action.

Very truly yours,

VINCENT R. STOLOWSKI
Vincent R. Stolowski
State Supervisor

VRS:clp

cc: Wes Bell
Inspector
Attorney General

Permit Denials 10/30/68

(Logo)

STATE OF NEW JERSEY

Department of the Treasury
209 E. State Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising Tax Bureau

October 30, 1968

Hartman & Schlesinger
1 West Main Street
Moorestown, New Jersey 08057

Re: App. #12553 - New Rt. 72 n/s about 660 ft. e/o the center of Jennings Road
App. #12554 - New Rt. 72 s/s about 700 ft. e/o the center of Jennings Road
App. #12555 - New Rt. 72 s/s about 410 ft. w/o the center of Jennings Road
App. #12558 - New Rt. 72 n/s about 650 ft. w/o the center of Jennings Road
App. #12636 - New Rt. 72 s/s about 1000 ft. w/o the center of Jennings Road
App. #12637 - New Rt. 72 n/s about 1320 ft. w/o Jennings Road (cor. of Union Ave.)
App. #12682 - New Rt. 72 s/s about 1510 ft. w/o Jennings Road
App. #12692 - New Rt. 72 n/s about 2210 ft. w/o Jennings Road
App. #12710 - New Rt. 72 s/s about 2275 ft. w/o Jennings Road

Stafford Twp. Ocean

ATTENTION: Alfred A. Faxon, III

Permit Denials 10/30/68.

Dear Mr. Faxon:

In your letter of October 21, 1968, regarding Violation Nos. 846 through 851, in the fifth paragraph you made mention of the above applications to which I'm now answering.

As stated in my letter of disapproval of October 15, 1968, the facts remain unchanged. The road is not *officially* opened to the public and will not be until (according to the Highway Dept.) sometime in December.

We will then, and only then, consider applications for inspection.

I have no alternative but to consider these applications as disapproved.

If I don't hear from you within 15 days from the date of this letter, the matter will be closed and when the road in question is officially opened, new applications will be considered.

Very truly yours,

VINCENT R. STOLOWSKI
Vincent R. Stolowski
State Supervisor

VRS:clp

cc: Wes Bell
Inspector
Deputy Attorney General

Hold in Abeyance

(Logo)

STATE OF NEW JERSEY

Department of the Treasury
209 E. State Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising Tax Bureau

November 8, 1968

Hartman & Schlesinger
1 West Main Street
Moorestown, New Jersey 08057

Re: Wes Outdoor Advertising Company
applications for new Rt. 72

ATTENTION: Alfred A. Faxon, III

Dear Mr. Faxon:

In answer to your letter of November 6, 1968, regarding the above, because of recent events I don't feel that a hearing is necessary.

In view of the fact that you will not be available until November 15th and since the Highway Department confirmed the fact that the new Rt. 72 will be officially opened the week of November 18th, I will hold the applications in abeyance until that time and an inspection of the locations will be made either that week or the week after depending on the workload of the inspector. His findings will then be forwarded to Mr. Bell, copies of which will be forwarded to you.

Very truly yours,

VINCENT R. STOLOWSKI clp
Vincent R. Stolowski
State Supervisor

VRS:clp
cc: Inspector

Order to Remove Advertising Copy 11/26/68

(Logo)

STATE OF NEW JERSEY

Department of the Treasury
209 E. State Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising Tax Bureau

November 26, 1968

Wes Outdoor Advertising Company
P. O. Box 538
Manahawkin, New Jersey 08050

Re: New applications

ATTENTION: Wesley Kenneth Bell

Dear Mr. Bell:

On November 25, 1968, my inspector was prepared to consider all your new applications, however, he found that you have not complied with the agreements of the hearing of October 24, 1968.

He will be in that area of Ocean County the latter part of next week and he will make another attempt to inspect the locations providing you have complied with all provisions of the hearing, i. e. your signs will read "this property for sale or lease etc."

Very truly yours,

VINCENT R. STOLOWSKI clp
Vincent R. Stolowski
State Supervisor

VRS:clp

cc: Alfred A. Faxon, III
Inspector

Applications Returned 12/5/68

Hartman & Schlesinger
Dec 10 1968

December 5, 1968

Wes Outdoor Advertising Company
P.O. Box 538
Manahawkin, New Jersey 08050

Re: App. #12553 - New Rt. 72 N/S about 660 ft. E/O the center of Jennings Road
App. #12554 - New Rt. 72 S/S about 700 ft. E/O the center of Jennings Road
App. #12555 - New Rt. 72 S/S about 410 ft. W/O the center of Jennings Road (Sale Sign—up)
App. #12558 - New Rt. 72 N/S about 650 ft. W/O the center of Jennings Road (Sale Sign—up)
App. #12636 - New Rt. 72 S/S about 1000 ft. W/O the center of Jennings Road (Car Lot for Lease—up)
App. #12637 - New Rt. 72 N/S about 1320 ft. W/O Jennings Road (cor. of Union Ave.) (Sale Sign—up)
App. #12682 - New Rt. 72 S/S about 1510 ft. W/O Jennings Road (Geo. Rest.—F.R.H.—up)
App. #12692 - New Rt. 72 N/S about 2210 ft. W/O Jennings Road
App. #12710 - New Rt. 72 S/S about 2275 ft. W/O Jennings Road (Under Const.)
Stafford Twp. Ocean

(Resubmitted markers up by 2-11-68)

ATTENTION: Wesley Kenneth Bell, President

Applications Returned 12/5/68.

Dear Mr. Bell:

The above described applications are being returned because the inspector cannot locate the locations where the proposed signs are to be erected.

On each application you indicate "see Survey map on file with the N.J. Outdoor Advertising Tax Bureau". At the hearing held on October 24, 1968 you indicated that the sign locations shown on the map were premise signs which we, prior to your statement, assumed to be violations.

In order for the Bureau to make a proper inspection, please sketch the location on the applications and put up some sort of markers where you intend to build the structures so they may be easily located by the inspector. A small post with the companys' name will do. This post should be where the end of the sign would be nearest to the highway. In the case of V-Type signs, place the post at the height of the V.

Very truly yours,

VINCENT R. STOLOWSKI
State Supervisor

VRS:ab

Notice of Intent to Condemn 12/5/68

In Reply Please Refer To
Route 72 (1953) Sec. 6
Route 72 (1953) Sec. 7

(Seal)
STATE OF NEW JERSEY

Department of Transportation
David J. Goldberg, Commissioner
Trenton 08625

December 5, 1968

Honorable Robert F. Holm
Mayor, Stafford Township
Municipal Building
Manahawkin, New Jersey

Dear Mayor:

In compliance with Article 1, Chapter 7 of Title 27 Revised Statutes as amended, I hereby notify the governing body of Stafford Township that the State of New Jersey intends to acquire property along both sides of Route 72, for restoration, preservation and enhancement of scenic beauty from a point 1,050 feet West of Mill Creek to Route 9 in Manahawkin, officially described as Route 72 (1953) Section 6; and from Route 9 in Manahawkin to Morris Boulevard in Hilliards and Beach Haven West, officially described as Route 72 (1953) Section 7.

Sincerely,

RUSSELL H. MULLEN
Russell H. Mullen
Assistant Commissioner, Highways

One of Group of Permit Denials 12/19/68

December 19, 1968

Maps Reference
(G)

Wes Outdoor Advertising Company
P. O. Box 538
Manahawkin, New Jersey 08050

Re: Application No. 12682
Rt. 72 ss 1600 ft. eo Rt. US 9
underpass Stafford Twp. Ocean

ATTENTION: Wesley Kenneth Bell, President

Dear Mr. Bell:

The above application for a permit for the display of outdoor advertising at the captioned location does not come within the purview of the provisions of the "Outdoor Advertising Act" (C. 191, P. L. 1959 as amended by C. 93, P. L. 1963 Sec. 11, (1)) and regulations promulgated thereto, and you are advised that your application is denied.

Section 11 (1) provides that no permit shall be issued where it will injuriously affect any public interest.

This notice is without prejudice to any further or additional rights of the State, and is not intended to waive any other liabilities or penalities which may be due the State.

Very truly yours,

Vincent R. Stolowski
State Supervisor

VRS:clp

cc: Alfred A. Faxon, III
Inspector
Attorney General

Notice of Intent to Expand Area of Takings 1/22/69

In Reply Please Refer To
Route 72
Section 8
Stafford Township

(Seal)
STATE OF NEW JERSEY

Department of Transportation
David J. Goldberg, Commissioner
Trenton 08625

January 22, 1969

Honorable Robert F. Holm
Mayor, Stafford Township
Municipal Building
Manahawkin, New Jersey

Dear Mayor:

In compliance with Article I, Chapter 7 of Title 27 Revised Statutes as amended, the governing body of the Township of Stafford is hereby notified that the State of New Jersey intends to acquire properties along the South side of Route 72 for restoration, preservation and enhancement of scenic beauty from the East end of the bridge over Manahawkin Bay to the West end of the bridge over West Thorofare, officially described as Route 72 (1953) Section 8.

Very truly yours,

JOSEPH R. CUNNINGHAM
Joseph R. Cunningham
Ass't. State Highway Engineer

Notice to Remove 2/25/69

(Seal)
STATE OF NEW JERSEY
Department of the Treasury
209 E. State Street
Trenton, New Jersey 08625

Division of Taxation — Outdoor Advertising Tax Bureau

February 25, 1969

Wes Outdoor Advertising Company
P. O. Box 538
Manahawkin, New Jersey 08050

Re: Violation Nos. 1183, 1184, 1193, 1284, 1285
New Route 72
Stafford Twp. Ocean

ATTENTION: Wesley Kenneth Bell

Dear Mr. Bell:

In my letters of February 7, 1969, you were advised to have the signs, cited by the above violation numbers, removed by February 26, 1969, or we shall remove same on that date as provided under R. S. 54:40-57.

Your failure to remove these signs forces me to officially notify you that Riley Neon Signs of Pleasantville, New Jersey will be deputized and contracted to remove these violations at 10:00 a. m. on February 26, 1969. As provided under R. S. 54:40-57, you will be charged with double the cost of the removal of these signs and structures as a penalty, with amounts to $4600.00.

Notice to Remove 2/25/69.

This notice is without prejudice to any further or additional rights of the State, and is not intended to waive any other liabilities or penalties which may be due the State.

Very truly yours,

VINCENT R. STOLOWSKI
Vincent R. Stolowski
State Supervisor

VRS:clp

cc: Alfred A. Faxon III
Inspector
Attorney General

Request for Hearing 12/4/72

Wed. 9 A.M. In Reply Please Refer To

(Seal)

STATE OF NEW JERSEY

Department of Transportation
John C. Kohl, Commissioner
Trenton 08625

December 4, 1972

Mr. Wesley K. Bell
Wes Outdoor Advertising Company
P. O. Box 538
Manahawkin, New Jersey

Dear Mr. Bell:

This letter will acknowledge and thank you for your correspondence dated October 25, 1972 wherein you requested an informal hearing on nine applications.

Due to a heavy "pre-holiday" schedule, it will not be possible to arrange your hearing until after the first of the year. Please advise us by letter of the date on which you would like to schedule the meeting. In view of the fact that you have requested an informal hearing, I assume you will present arguments pertaining to the applications on your own behalf. However, if you intend to be represented by legal counsel, please advise, so that I can make the necessary arrangements with our legal staff.

Very truly yours,

VICTOR A. RICE, JR.
Victor A. Rice, Jr.
Outdoor Advertising Section

cc: Messrs. M. S. Greitzer
William Dawidowski

Permit Denials 4/1/75

In Reply Please Refer To
O.A.—0095

(Seal)
STATE OF NEW JERSEY

Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

Alan Sagner
Commissioner

April 1, 1975

Wes Outdoor Advertising Company
P. O. Box 538
Manahawkin, New Jersey 08050

Re: Denied Applications—Stafford Twp.

41822	41831
41823	41832
41828	41833
41829	41834
41830	

ATTENTION: Wesley K. Bell

Dear Mr. Bell:

Mrs. Dorothy Andres has requested that I conduct a review of our files in order to make a determination of the status of your denied applications for outdoor advertising permits in Stafford Township, New Jersey.

Originally these applications were denied because Stafford Township had an ordinance prohibiting the erection of off-premise advertising signs within the boundaries of their municipality. A review of the latest township ordinance indicates that the prohibition against off-premise advertising is still in effect.

Permit Denials 4/1/75.

After reading the February 19, 1973, minutes of the Stafford Township Zoning Board which you were kind enough to submit with your letter of March 14, 1974, I could find no reference to the granting of permission to your company for the erection of off-premise advertising signs in their township.

If the Zoning Board has granted your company a variance permitting off-premise advertising, please forward a copy of this for our files. This is a document which is required by this office to determine if outdoor advertising permits will be issued to your company. In the event documentation can be produced which specifically clarifies the township's position concerning your request for the erection of off-premise advertising structures, it will be necessary for you to reapply on new applications and return same to this office with the required fees.

Upon receipt of this requested material, we will be in a position to further consider your request for outdoor advertising permits.

Very truly yours,

WILLIAM WISLOCKY
William Wislocky
Outdoor Advertising

WW/clh

Letter from Sterns, Herbert & Weinroth
Re: Settlement Conference

STERNS, HERBERT & WEINROTH
A Professional Corporation
Counsellors At Law
186 West State Street
P. O. Box 1298
Trenton, New Jersey 08607
(609) 392-2100

Joel H. Sterns
Richard K. Weinroth
Michael J. Herbert
Frank J. Petrino
William J. Bigham
W. S. Gerald Skey
John H. Dumont
John M. Donnelly
Mark D. Schorr
Simon Kimmelman
Michael M. Matejek
Roy B. Smolarz
Jane F. Kelly
Vincent J. Paluzzi
Richard M. Hluchan
Peter J. Lynch

10 Nassau Street
P.O. Box 1248
Princeton, N.J. 08540
(609) 924-2108

Suite 600
1150 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 296-3432

Of Counsel
Richard J. Hughes

March 16, 1983

Mr. Wesley K. Bell
P.O. Box 538
Manahawkin, NJ 08050

Re: *Bell v. State of New Jersey*
Civil Action No. 80-531

Letter from Sterns, Herbert & Weinroth
Re: Settlement Conference.

Dear Mr. Bell:

Yesterday I attended a status conference in this matter which was called by Judge Anne E. Thompson. Deputy Attorneys General Richard Harcar and Nickolas Monteforte appeared on behalf of the defendants.

Judge Thompson made it clear that it is unlikely that we will prevail upon the pending cross-motions for summary judgment. Moreover, she indicated that it would be preferable for the parties to amicably resolve the matter. Mr. Monteforte indicated that the State would be willing to settle on terms which are remarkably similar to the terms I suggested that the State might accept when we discussed the possibility of settlement on March 2, 1983. Specifically, Mr. Monteforte stated that he would recommend settlement as follows:

(1) All of our claims against defendants would be dismissed with prejudice;

(2) The State would agree to forego any claims for monetary penalties. (As you know, this is a potentially large sum, since under N.J.A.C. 16:41-8.16 the maximum penalty would be $200 per day for each of the 8 billboards at issue beginning in November, 1977.).

(3) The State would agree to forego all claims for attorneys' fees under 42 U.S.C. §1988.

(4) The State would agree to forego claims for profits made by you on the signs in question for which no permits have been granted.

(5) With respect to parcel E31B, the only one as to which the issue of title remains, the State may permit you to maintain this billboard and can perhaps be persuaded to dismiss the pending (but inactive) eminent domain proceeding.

(6) The State would require the remaining billboards to be removed within 30 days. You would be permitted to remove them and thereby salvage the signs for use elsewhere.

(7) The State would intervene in the *Charlton* matter and assist in our defense.

I asked Mr. Monteforte whether, in light of the discriminatory nature of the taking of your property and the fact that the compensation for the takings is still on deposit with the Superior Court, the State might consider retaining the funds and reconveying the parcels back to you. His answer was an unequivocal "no". Also, I asked whether the State might consider paying you an additional sum for the value of the billboards themselves. Again the response was negative.

At this point, Judge Thompson asked to speak with me privately. After Messrs. Harcar and Monteforte had absented themselves, Judge Thompson told me that it was extremely unlikely that we would prevail in our case, and that the State's summary judgment motion has an excellent chance of being granted. She indicated that I should strongly recommend settlement to you in order that you at least not be exposed to substantial monetary liability in the form of penalties, profits, and attorneys' fees. I pointed out our position that you had been wronged by the State's action, that your business would

be ruined, and that surely the equities favored your position. The Judge responded that *res judicata* posed a substantial if not insurmountable, bar to relief in your favor.

Finally, Judge Thompson conferred with the defense attorneys privately. At the conclusion of this conference, she suggested that I convey the State's settlement proposal to you, and scheduled another conference for March 29, 1983, at 9:30 a.m. by which time I am to present our response. In the event no settlement is effected, Judge Thompson indicated that she will act to decide the pending motions for summary judgment.

I want to assure you that we have at all times vigorously and zealously advocated your cause before the Court, and will continue to do so. However, Judge Thompson's frank and candid comments to me in private only confirm the judgment which I have expressed to you previously: that the State will very likely prevail in this matter, both before Judge Thompson and on appeal to the Third Circuit. I have discussed Judge Thompson's comments, as well as the State's settlement offer, with Joel H. Sterns and William J. Bigham of this firm, and they concur in my strong recommendation that this matter be settled substantially along the lines suggested by the State. I am gravely concerned that if we do not settle the case, and assuming that judgment is entered in favor of the State, you will be exposed to liability for a substantial sum of money for penalties, profits, and the State's attorneys' fees, not to mention the attorneys' fees you will have to expend for defense against such subsequent actions.

Letter from Sterns, Herbert & Weinroth
Re: Settlement Conference.

In sum, it is my recommendation that your best interests would be served by settling this case rather than taking the substantial risk that judgment will be granted to the State and thereby cause you to be potentially further liable for a large amount of money. I would be pleased to discuss this further with you at your convenience. I am required, however, to report our position to Judge Thompson by March 29.

Very truly yours,

RICHARD M. HLUCHAN
Richard M. Hluchan

RMH/kaq

Informal Hearing 1/2/76

(Seal)
STATE OF NEW JERSEY
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

Alan Sagner
Commissioner

January 2, 1976

Haines, Schuman & Butz
214 Washington Street
P. O. Box 608
Toms River, New Jersey 08753

Attention: Harold A. Schuman, Esq.

Dear Sir:

Subject: Wes Outdoor Advertising Company

I have reviewed our files with respect to outstanding matters concerning the Wes Outdoor Advertising Company and have discerned that:

(1) There is overdue payment pending on a judgment against the subject company from the case of Kingsley versus Wes Outdoor Advertising Company.

(2) Several applications for permits to erect signs have been denied for various locations adjacent to Route 72. An informal hearing was held concerning this matter on June 4, 1975.

(3) Permit No. 7992 for an encroaching sign located on Route 72 N/S, 1 Mile West of Route U.S. 9 in Stafford Twp., Ocean County was revoked by

letter dated August 7, 1975. This sign was removed by departmental personnel on November 25, 1975. (Illegible)

Please be advised of the following concerning these matters:

Item 1 has been transmitted to Deputy Attorney General Michael Fichera for action to collect the monies due to the State of New Jersey.

Item 2 is the subject of pending condemnation proceedings and, therefore, any action by this office may be prejudicial to the case. Any further information you may present regarding this item will be strictly for file purposes at this time.

Item 3 will be the subject of an informal hearing which is scheduled for Wednesday, January 14, 1976, at 10 A.M. This hearing will be in the offices of the Bureau of Maintenance, 12 Farrell Avenue, Trenton, New Jersey. Please contact Mr. William Dawidowski at 292-4247 to confirm this date.

Very truly yours,

ALBERT B. BIEBER
Albert B. Bieber
Supervisor, Outdoor Advertising,
Permits & Highway Marking

ABB/ol

Notice of Trespass and Removal 4/26/77

In Reply Please Refer To

(Seal)

STATE OF NEW JERSEY

Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

Alan Sagner
Commissioner

April 26, 1977

REGISTERED MAIL—RECEIPT REQUESTED

Mr. Wesley K. Bell
Wes Outdoor Advertising Company
P. O. Box 538
Manahawkin, New Jersey

Gentlemen:

Re: Route 72—Vicinity M.P. 22.3
Stafford Township

Please be advised that this letter serves as official notice from the Department of Transportation to Wesley K. Bell that several poles and construction items have been placed and remain illegally on State right-of-way. These are identified as advertising sign structure supports and are considered violations of the Outdoor Advertising Statutes—N.J.S.A. 27:7A-13 and regulations pursuant as given in N.J.A.C. 16:41—Subchapter 8.

Removal of these items of trespass is scheduled within 30 days of the date of this letter. As stipulated under the

Notice of Trespass and Removal 4/26/77.

removal provisions in N.J.A.C. 16:41-8.15, Wesley K. Bell will be billed for double the cost of removal plus any other penalties due the State as provided by law.

Very truly yours,

DOROTHY L. ANDRES
Dorothy L. Andres
Supervisor of Outdoor Advertising,
Permits, and Highway Marking

DLA/ol

Notice of Removal 11/8/77

In Reply Please Refer To

CERTIFIED MAIL
Sign Encroachment
No. 3SE9-93

Russell Mullen
Acting Commissioner

(Seal)
STATE OF NEW JERSEY

Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

November 8, 1977

Parcel L-2R-31D
Map Reference #H

Mr. Wesley K. Bell
Wes Outdoor Advertising Co.
Box 538
Manahawkin, New Jersey

Dear Sir:

A field investigation reveals that you have erected and are maintaining a sign encroachment on State Highway right-of-way as follows:

Location: East Bound Rt. 72, 2/10 of mile,
East of Jennings Rd. at
Mile Post 24.0

Description: Group of Seven Poles

This encroachment is a direct violation of New Jersey Statutes Annotated 27:7A-11, et seq., which states that no advertising signs or devices may be erected on or overhanging the State Highway right-of-way and New

Jersey Statutes Annotated 27;5-1, et seq., which prohibits advertising along the Highway without the written consent of the property owner.

You are requested to remove the above encroachment within thirty (30) days of the date of this letter. If it is not voluntarily removed by you within this time, the sign will be removed by Department of Transportation Personnel. Costs incurred by the State for removal and storage will be considered your liability and you will be billed $50 or double the cost of removal, whichever is greater as provided in New Jersey Statutes Annotated 54:40-57 and New Jersey Administrative Code 16:41-8.15. The sign will be stored for thirty days and upon furnishing proof of payment will be released to you. If this encroachment is not claimed within this period of storage, said encroachment will be destroyed.

Your prompt assistance and cooperation will be appreciated. No further notice will be given to you. If you have any questions, please immediately contact:

Mr. Paul Piot Telephone: (609) 292-4247

Very truly yours,

WORTH CUNNINGHAM
Worth Cunningham
Chief, Bureau of Maintenance

Notice of Hearing 1/10/78

file Bell

(Seal)
STATE OF NEW JERSEY
Department of Transportation
1035 Parkway Avenue
Trenton, N.J. 08625

Russell H. Mullen
Acting Commissioner

January 10, 1978

Michael H. Malin, Esq.
White & Williams
1234 Market Street
Philadelphia, Pa. 19107

Nickolas Monteforte
Deputy Attorney General
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

Re: Sign Encroachment—No. 3SE9-88,
3SE9-86, 3SE9-90, 3SE9-91, 3SE9-92,
3SE9-93, 3SE9-89
Wesley K. Bell

Gentlemen:

Please take notice that the hearing in the above matter has been scheduled for Tuesday, January 31, 1978. The hearing will be held in Conference Room A at the

Department of Transportation's offices located in the Lawrence Shopping Center, Route 1, Lawrence, N.J. at 10:00 a.m.

Sincerely yours,

ALBERT R. HASBROUCK
Albert R. Hasbrouck
Chief Hearing Examiner

ARH/ms

cc: Dorothy Andres
Worth Cunningham

Content of Hearing 1/25/78

(Seal)
STATE OF NEW JERSEY

Department of Transportation
1035 Parkway Avenue
Trenton, N.J. 08625

Russell H. Mullen
Acting Commissioner

January 25, 1978

Michael H. Malin, Esq.
White & Williams
1234 Market St.
Philadelphia, Pa. 19107

Nickolas Monteforte
Deputy Attorney General
Department of Transportation
1035 Parkway Avenue
Trenton, N.J. 08625

Re: Sign Encroachment—No. 3SE9-88,
3SE9-86, 3SE9-90, 3SE9-91,
3SE9-92, 3SE9-93, 3SE9-89
Wesley K. Bell

Gentlemen:

With regard to the hearing scheduled for January 31, 1978, it is my understanding that Mr. Wesley K. Bell contests the validity of the removal notices served on him with regard to the above signs. The Department of Transportation will be expected initially to establish for the record its reasons for the action taken with regard to each sign and Mr. Bell will then be allowed to present any evidence it deems appropriate on the same matters.

Content of Hearing 1/25/78.

If you have any questions on the procedure to be followed, please feel free to call me at (609) 292-3279.

Sincerely yours,

ALBERT R. HASBROUCK
Albert R. Hasbrouck
Chief Hearing Examiner

ARH/ms

Refusal to Present Witnesses 3/9/78

(Seal)
STATE OF NEW JERSEY

Department of Law and Public Safety
Division of Law
Transportation—Highways Section
1035 Parkway Avenue
Trenton 08625

John J. Degnan
Attorney General

Stephen Skillman
Assistant Attorney General
Director

Richard L. Rudin
Deputy Attorney General
Section Chief

March 9, 1978

Michael H. Malin, Esq.
WHITE & WILLIAMS
17th Floor
1234 Market Street
Philadelphia, Pennsylvania 19107

Re: Sign Encroachment: No. 3SE9-88, 3SE9-86, 3SE9-90, 3SE9-91, 3SE9-92, 3SE9-93, 3SE9-89
Wesley K. Bell

Dear Mr. Malin:

I regret to inform you that the State of New Jersey, Department of Transportation, cannot honor your request to produce Vincent R. Stolowski, Clarence Pell, Joseph Cunningham and Worth Cunningham in connection with the alleged proceedings in the above matter. The issues which are before the Hearing Examiner are narrow in scope and pertain only to the

matter of title to the real property involved and whether or not there is an encroachment on State property. The above parties have no involvement with the particular facts which are at issue herein, and, with the exception of Mr. Worth Cunningham, took no part in either the investigation or preparation of this matter and will have no function as witnesses herein. Mr. Worth Cunningham's testimony will be limited to his signing of the letters to your client, which letters constitute the notices of encroachment. He will be presented as a witness for the limited purpose of testifying to this singular activity.

When the hearing reconvenes, the Department of Transportation anticipates continuing with its proofs as to title to the property in question and the location of encroachments on this property.

Very truly yours,

JOHN J. DEGNAN
Attorney General of New Jersey
By: NICKOLAS F. MONTEFORTE
Nickolas F. Monteforte
Deputy Attorney General

NFM: lt

Permit Re-Application 10/11/79

Form OA-6 3/78

NEW JERSEY DEPARTMENT OF TRANSPORTATION – APPLICATION FOR OUTDOOR ADVERTISING PERMIT

FOR OFFICE USE ONLY

APP. NO.	YEAR	PERMIT NO.	VIOL. NO.	PROCESS DATE	LATE CHG.	FEE	AMOUNT RECEIVED				CASH	BY
						Annual	Fee	Late Chg.	TOTAL		CHECK	
						Seal					M.O.	DATE

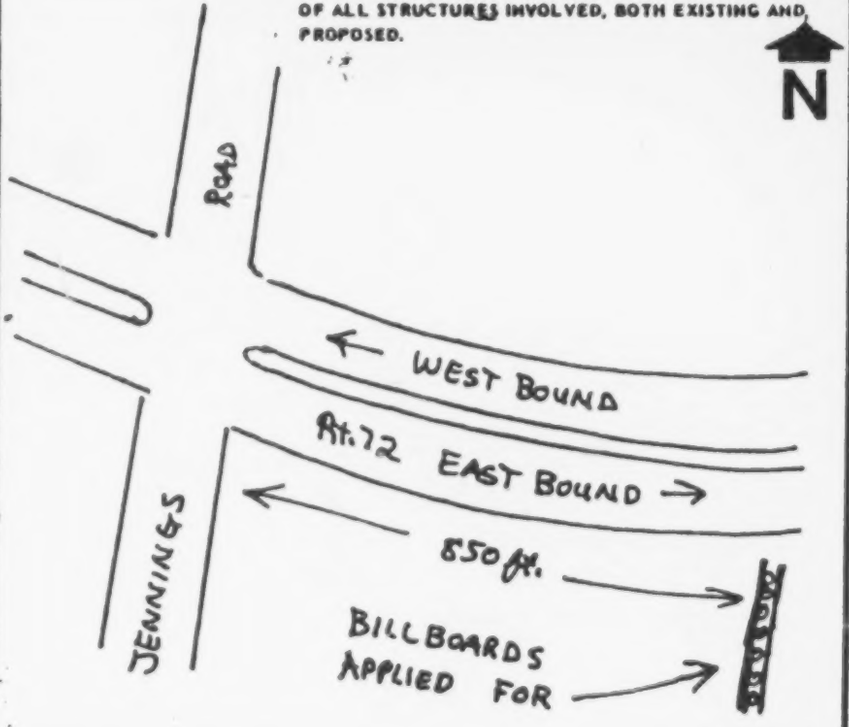
SEE INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING – FILL IN ALL SPACES BY TYPING OR PRINTING IN INK

1. TRADE NAME WES OUTDOOR ADVERTISING CO.
2. NAME WESLEY K. BELL TEL. NO. 609-597-3222
3. P.O. ADDRESS P.O. BOX 538 - 188 RT. 72
4. CITY MANAHAWKIN STATE N.J. ZIP CODE 08050
7. LOCATION OF SIGN ROUTE 72 - SOUTHSIDE - about 850 FT. EAST OF JENNING ROAD M.P. 24
8. MUNICIPALITY STAFFORD TOWNSHIP 9. COUNTY OCEAN

5. DIMENSIONS OF SIGN:
Feet Long 50
Feet High ..... x 10
Number of spaces or signs x 2
Total Square Feet ..... = 1000
A sign is listed as two spaces when Advertising on both side.

6. TYPE OF SI
☐ No. 1 Ro
☐ No. 2 Wa
☒ No. 3 Gr
☐ Illuminat

10. SKETCH OF LOCATION *IMPORTANT!* IF APPLICATION IS FOR A STRUCTURE WHICH WILL CONSTITUTE PART OF A MULTIPLE FACED, BACK TO BACK OR V-TYPE DISPLAY, SHOW DIMENSIONS OF ALL STRUCTURES INVOLVED, BOTH EXISTING AND PROPOSED.



11. ADVERTISEMENT TO BE DISPLAYED IS:
COMMERCIAL ADVERTISING

12. ZONING
The property on which the sign wi located is zoned for
COMMERCIAL

13. CERTIFICATION NOTE: R.S. 54:52-2 provides that anyone who makes a false affirmation s be guilty of a misdemeanor.

ENCLOSED IS CHECK ☒ MONEY ORDER ☐ FOR $ 30.00

In accordance with the provisions of c. 191, L. 1959, as amended and supplemented, and regulation promulgated thereto, I, the undersigned, hereby make application for an Outdoor Advertising Permit erect or maintain an advertisement at the location described. I decl true to the best of my knowledge and belief, and that I have the pers his agent to use the property for said purpose. A copy of the owner' vided to the Outdoor Advertising Section upon request. I agree to m condition, and I further agree to remove the sign or advertisement up permit, repainting the portion of the building or other structure to the completely obliterate the advertisement painted thereon. Trees or sh will not be trimmed or altered in any way to increase visibility of th alteration or any other violation of the Outdoor Advertising Statutes diate revocation of the permit. The statutory fee is herewith submit plication is denied, I fully understand that this amount will not be r

EXIBIT 75P

SIGNED BY Wesley K. Bell

TITLE Owner DATE Oct 11th 1979

Refusal to Accept Applications

In Reply Please Refer To

(Seal)
STATE OF NEW JERSEY
Department of Transportation
1035 Parkway Avenue
P.O. Box 101
Trenton, New Jersey 08625

Louis Gambaccini
Commissioner

November 13, 1979

Clinton E. Cronin, Attorney
200 Main Street
Toms River, New Jersey 08753

Dear Mr. Cronin:

RE: Wesley K. Bell
Sign Applications—Route 72

With the advice of the Attorney General's office the Department of Transportation responds to your letter of October 11, 1979 on behalf of your client, Wesley K. Bell as follows:

1. The original check for $210 and seven applications submitted are returned herein. Applications for permits for these signs have been previously denied and the issue as to the State's ownership in the right of way on which these signs are located has been litigated to a conclusion favorable to the State. In light of the previous permit denials and the final resolution of the issues litigated, the current applications are considered improper.

Refusal to Accept Applications.

2. The signs presently located on those properties for which the seven applications were submitted are to be removed within 30 days of the date hereof, or they will be removed by the New Jersey Department of Transportation pursuant to N.J.A.C. 16:41-8.15. These locations are identified as follows:

Your Application Location	*N.J.D.O.T. Parcel No.*	*Sign Encroachment Violation No.*
Route 72 (MP 22.3) North Side— 1 mile west of Route 9	L11B	3SE9-86
Route 72 (MP 23.2) South Side— East of Route 9 at Mill Creek	L4B	3SE9-88
Route 72 (MP 23.6) South Side— 100 feet east of Union Creek	L17D	3SE9-90
Route 72 (MP 23.6) North Side— West of Union Street	L17G	3SE9-89
Route 72 (MP 23.8) South Side— 680 feet east of Union Street	L22B	3SE9-91
Route 72 (MP 23.7) North Side- 550 feet west of Jennings Road	L22C	3SE9-92
Route 72 (MP 24.0) South Side- 850 feet east of Jennings Road	E31B & L2R31D	3SE9-93

In addition,

3. Parcel E31B/L2R31D, your location as 850 feet east of Jennings Road and previously cited as Sign Encroachment 3SE9-93, all records within this Department indicate State ownership to the parcel. Should you have documentation contrary to New Jersey Department of Transportation ownership which you wish considered, please advise this office

in writing, together with copies of this documentation, within 15 days of the date of this letter.

Very truly yours,

DOROTHY L. ANDRES
Dorothy L. Andres
Supervisor of Outdoor
Advertising, Permits, and
Highway Markings

DLA:sjp

cc: Wesley K. Bell
P.O. Box 538
Manahawkin, N.J. 08050

bcc: J. Freidenrich
M. Greitzer
D.A.G., N. Monteforte
W. Cunningham
J. Nettleton

Statement of Ownership 11/28/79 from Clinton Cronin, Esquire

CLINTON E. CRONIN
Attorney at Law
200 Main Street
Toms River, New Jersey 08753
(201) 349-5775

November 28, 1979

Ms. Dorothy L. Andres
Supervisor of Outdoor Advertising,
Permits, and Highway Markings
State of New Jersey
Department of Transportation
1035 Parkway Avenue
P. O. Box 101
Trenton, New Jersey 08625

Re: Wesley K. Bell

Dear Ms. Andres:

With reference to your letter of November 13, 1979, I am hereby advising you that my client is the owner of Parcel E31B/L2R31D. Your letter, in my client's view, is obviously an attempt by you, individually, to assert a claim previously abandoned by the New Jersey Department of Transportation.

With regard to the balance of your letter, I cannot understand why you have refused to accept the applications for permit for signs which we submitted to you with our letter of October 11, 1979. I am at a further loss to understand why you drew the word "void" across my client's certified check in the amount of $210.00 which covered the application fees.

Statement of Ownership 11/28/79 from Clinton Cronin, Esquire.

I am herewith returning both the check and applications which I must insist be processed in the ordinary course. I must further ask that you withdraw your threat to have the Department of Transportation remove the signs at the seven locations listed in your letter of November 13, 1979.

You will please consider this letter as an appeal from the decisions contained in your letter of November 13, 1979 and as a request for an administrative hearing before the Department of Transportation, in order that my client may have a hearing as to your decisions.

I will await further word from you as to the scheduling of the hearing or hearings required under the administrative procedures act.

Very truly yours,

CLINTON E. CRONIN
Clinton E. Cronin

CEC/jc
encl.

cc: Mr. Louis J. Gambaccini,
Commissioner

Notice to Remove Copy 1/8/80

CERTIFIED MAIL—RECEIPT REQUESTED

In Reply Please Refer To

(Seal)
STATE OF NEW JERSEY

Department of Transportation
1035 Parkway Avenue
P.O. Box 101
Trenton, New Jersey 08625

Louis J. Gambaccini
Commissioner

December 3, 1979

Clinton E. Cronin, Attorney
200 Main Street
Toms River, New Jersey 08753

Dear Mr. Cronin:

RE: Wesley K. Bell
Sign Applications—Route 72

Please refer again to my letter of November 13, 1979 which transmitted to you the Department's determination in the above referenced matter.

Your comments are inappropriately directed and any questions or correspondence in this matter should be addressed to the Chief, Legal Section assigned to the Department of Transportation.

Very truly yours,

DOROTHY L. ANDRES
Dorothy L. Andres
Supervisor of Outdoor Advertising,
Permits, and Highway Markings

DLA:sjp

Refusal to Accept Applications 2/5/80

(Seal)
STATE OF NEW JERSEY
Department of Law and Public Safety
Division of Law
Transportation—Highways Section
1035 Parkway Avenue
Trenton 08625
Telephone 292-5709

John J. Degnan
Attorney General

Stephen Skillman
Assistant Attorney General
Director

Richard L. Rudin
Deputy Attorney General
Section Chief

February 5, 1980

Clinton E. Cronin, Esquire
200 Main Street
Toms River, New Jersey 08753

Re: Wesley K. Bell
Sign Applications—Route 72

Dear Mr. Cronin:

Returned herewith is your client's check in the amount of $210 together with the sign permit applications which it is intended to cover.

When said check and applications were previously returned by the Supervisor of Outdoor Advertising, you were advised that these permit applications were for signs which had previously been denied permits and for which the issue of ownership of the property on which they were located had previously been litigated to a

conclusion favorable to the State of New Jersey. You were advised then, as you are now being advised, that the applications were and are improper. Under no circumstances will these applications be accepted by the Department of Transportation.

The Supervisor of Outdoor Advertising has also informed both you and your client that certain structures will be removed. Quoting from the November 13, 1979 letter:

> "The signs presently located on those properties for which the seven applications were submitted are to be removed within 30 days of the date hereof, or they will be removed by the New Jersey Department of Transportation pursuant to N.J.A.C. 16:41-8.15. These locations are identified as follows:

Your Application Location	*N.J.D.O.T. Parcel No.*	*Sign Encroachment Violation No.*
Route 72 (MP 22.3) North Side—1 mile west of Route 9	L11B	3SE9-86
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Route 72 (MP 23.6) North Side—West of Union Street	L17G	3SE9-89
Route 72 (MP 23.8) South Side—680 feet east of Union Street	L22B	3SE9-91
Route 72 (MP 23.7) North Side—550 feet west of Jennings Road	L22C	3SE9-92
Route 72 (MP 24.0) South Side—850 feet east of Jennings Road	E31B & L2R31D	3SE9-93"

Since the matter has been fully litigated, this decision is final.

Refusal to Accept Applications 2/5/80.

However, as a result of a meeting held on Wednesday, January 2, 1980, at the New Jersey Department of Transportation Offices in Trenton, at which you were present the following was agreed upon:

1. Parcels L11B, L17G, L17D, L22C and L22B are owned by the New Jersey Department of Transportation. Your client was allowed until January 31, 1980 to remove these encroachments.

2. For parcel L4B, your client was allowed until February 29, 1980 to produce documentation to the effect that the Department of Transportation condemnation proceedings did not implead the proper parties. During the interval, all advertising copy was to be removed by January 31, 1980. The above in no way prejudices the Department of Transportation's right to claim that this allegation has been previously adjudicated or is barred by prior litigation.

3. For parcel 2R31D or E31B advertising copy is to be removed by January 31, 1980. Proof of your client's legal right, if any, to this parcel will be furnished by February 29, 1980.

4. For parcels L22, 23B and 23 (which were not included in your client's permit applications), Mr. Bell was allowed until February 29, 1980 to present proof this his right to advertise on this parcel was not extinguished by the Department of Transportation and that he is not encroaching on State property. Any advertising copy on this parcel also was to be removed by January 31, 1980.

Refusal to Accept Applications 2/5/80.

Should any of the required documentation not be produced to the satisfaction of the Department of Transportation by the aforesaid dates, the subject signs will be removed without further notice.

Very truly yours,

JOHN J. DEGNAN
Attorney General of New Jersey
By: NICKOLAS F. MONTEFORTE
Nickolas F. Monteforte
Deputy Attorney General

NFM/dc

Enclosures

cc: Dorothy L. Andres, Supervisor
Outdoor Advertising, Permits
and Highway Markings

Report Showing "Blank Sign" 1/5/82

EVANS, KOELZER, MARRIOTT,
OSBORNE & KREIZMAN

MEMORANDUM

Date: 1/5/82

Subject: WES BELL V. STATE OF N.J.
File No. 16685

To: JOEL N. KREIZMAN

From: DON STRATTON

On 12/29/81, a survey was made on Route 72, Manahawkin, N.J., by the writer and Wes Bell. A map previously furnished by Mr. Bell was used in this survey and points of interest as furnished by Bell were numbered, 1 thru 35, on this map. In addition, a photograph was taken of the particular place of interest.

The following reflects the numbered place of interest, a photograph of same, and any comments by Mr. Bell:

Report Showing "Blank Sign" 1/5/82.

Bell applied for BB permit. State indicated it was taking whole property. Later removed from taking. Shallow depth subsequently taken by state.

BB east of Chrysler. Bell had purchase agreement for sale putting $2,000 down. Property condemned. State tried to get owners to sell front of property. Bell refused to sign off. No further action to date.

Affidavit of Ownership

ORIGINAL FILED
Jul 30 1982
Allyn Z. Lite, Clerk

STERNS, HERBERT & WEINROTH
A Professional Corporation
186 West State Street
P. O. Box 1298
Trenton, New Jersey 08607
(609) 392-2100
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

v.

STATE OF NEW JERSEY, JOHN J. DEGNAN
DOROTHY ANDRES and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Civil Action No. 80-531

Hon. Anne Thompson, *USDJ*

Affidavit of Ownership.

AFFIDAVIT OF WESLEY K. BELL

STATE OF NEW JERSEY }
COUNTY OF MERCER } ss.

WESLEY K. BELL of full age being duly sworn according to law upon his oath deposes and says:

1. I am the Plaintiff in this matter. I have been in the outdoor advertising business as Wes Outdoor Advertising Co. in the State of New Jersey since 1957.

2. This Affidavit is made by me in response to the Court's Order dated July 13, 1982. I believe that the facts set forth below demonstrate the existence in this case of material facts which preclude the entry of Summary Judgment in favor of Defendants.

3. I have never had the opportunity for a full hearing on the merits, either in Federal or State Court or before the New Jersey Department of Transportation (DOT), of any of the claims set forth in the Amended Complaint in this case.

4. As indicated in paragraphs 8—12 of the Amended Complaint, Defendants have refused to process my applications for permits to maintain outdoor advertising billboards on various parcels of land along Route 72 in Ocean County. As alleged in paragraph 13 of the Amended Complaint, on February 5, 1980 the Attorney General wrote to my former attorney returning my applications and my check for application fees. A copy of that letter is attached as Exhibit "A" (it was also filed as Exhibit "U" to Defendants' Papers in support of their Motion to Dismiss the Amended Complaint).

Affidavit of Ownership.

5. It is my good faith belief that I am entitled to the permits which are the subject of Exhibit "A", and that Defendants have violated my constitutional rights, as more specifically described in the Amended Complaint, by refusing to process my applications and issue the permits.

6. The Defendants, however, claim that I am not entitled to these permits, and further seek to have my billboards removed from the parcels of land in question because they allegedly encroach upon state property.

7. The DOT commenced an Administrative Hearing (hereafter "DOT Hearing") on January 31, 1978 in order to resolve the question of my entitlement to permits. *See,* Letter of January 25, 1978 from Albert R. Hasbrouck, Chief DOT Hearing Examiner, attached as Exhibit "B". *See also,* Letter of March 9, 1978 from Deputy Attorney General Nickolas Monteforte, attached as Exhibit "C", pointing out that the issues in the DOT Hearing are "narrow in scope and pertain only to the matter of title to the real property involved and whether or not there is an encroachment on state property."

8. Although one day of hearing was held on January 31, 1978 the hearing has never reconvened. Although the State presented various proofs during that day, I have had no subsequent opportunity to present my proofs, and obviously there has been no final administrative determination by DOT. At this point, given the period of time which has passed and the position DOT has taken against me in this case, I believe that DOT is prejudiced and could not serve as an objective and impartial decision maker in this matter. For that reason, I wish to

have my claims on the merits heard by this Court in order to redress the deprivation of my constitutional rights.

9. Attached as Exhibit "D" is a map which depicts the various parcels of land, containing my billboards, which are at issue here. This map represents areas along Route 72 in which DOT never attempted to condemn land, in which condemnation was announced but later withdrawn, and in which condemnation was purportedly undertaken. The map indicates the extent to which DOT has invidiously discriminated against me by singling out my land for taking, while allowing my competitors to continue to maintain billboards unhampered by the DOT. This map is clear evidence of DOT's arbitrary exercise of condemnation authority under the guise of highway beautification.

10. The parcels of land at issue here are listed at page two of Exhibit "A". For the reasons which follow, I believe I am entitled to billboard permits for each parcel.

11. With respect to parcel #L2R-31D (this parcel is identified by the "H" on Exhibit "D"), I presently have the right to maintain billboards. This parcel was the subject of the DOT Hearing, and the relevant portion of the transcript of that hearing applicable to this parcel is attached as Exhibit "E". The transcript erroneously refers to the parcel as L-2431D. On December 26, 1968 I entered into an agreement to purchase this parcel from the then record owner named Foster. The agreement was subsequently recorded on December 30, 1968. On or about January 7, 1972 I went to settlement on the agreement to purchase from Foster and at the same time assigned my rights to the parcel to individuals named

Kahl, Baldassarre and Ackaways. Simultaneously, Kahl, Baldassarrre and Ackaways deeded to me a permanent easement for the construction and maintenance of billboards on a specified 25 foot by 150 foot portion of the parcel, the 25 foot length fronting on Route 72 and the 150 foot length extending southward from Route 72. This easement was recorded on January 7, 1972 in book 3187, page one of the Ocean County records. The testimony of Paul J. Howard, Supervisor of DOT's Settlement Section, Right-of-Way Division, Bureau of Titles, indicates that individuals named Kahl and Ackaway conveyed their interest in this parcel to the State by deed dated December 5, 1974, recorded January 8, 1975. As indicated in Exhibit "E", although the State attempted to purchase this parcel from the owners of record, it has never taken action to purchase or otherwise condemn my easement. Thus as, indicated on page 128 of the transcript, my attorney asked Mr. Howard "did you ever take proceedings to condemn Mr. Bell's easement." Mr. Howard: "No, we took this case under agreement from the owners and the condition of the agreement was to convey, free and clear, title to the State. Now, the owners could not convey clear title because of the easements held by Mr. Bell. So the *case has not been settled.*" (emphasis added) Moreover, at page 129 of the transcript, the Hearing Officer asked: "Is it your testimony Mr. Howard, this case is still pending?" Mr. Howard answered: "Yes, it is. The owners couldn't convey clear title under the terms of the agreement and *we haven't instituted condemnation proceedings on this.*" (emphasis added)

Affidavit of Ownership.

Thus, it is clear from the DOT Hearing, and particularly by the testimony of DOT's own witness, that the DOT has never instituted condemnation proceedings against my interests in this parcel. Accordingly, DOT does not have full title in this parcel, and I am entitled to obtain permits for the billboards on this land.

12. Parcel number L4B is identified by the letter "C" on Exhibit "D". As indicated by the relevant portion of the DOT Hearing transcript applicable to this parcel, the State began a condemnation proceeding against the owners of record of this parcel (Dkt. No. L-7734-69), but later agreed to an out-of-court settlement for the sum of $8,000 on November 30, 1970. I, however, had entered into an agreement to purchase this property on January 16, 1968 and that agreement was subsequently recorded. At the time of the out-of-court settlement between the owners of record and the State, I was in possession of this property pursuant to the agreement. Thus, I refused to sign the settlement proferred to the owners of record by the State. Subsequently, the owners of record sued to have me removed from possession of the property. I counterclaimed for specific performance of the purchase agreement, and named DOT as a third-party defendant. At the hearing in Superior Court, a Deputy Attorney General appeared representing DOT and indicated to the Court that it was taking no position one way or the other. Subsequently, the Superior Court approved a settlement on April 23, 1975 whereby I paid the balance due on the purchase agreement of $8,000 plus interest (at the time of execution of the purchase agreement, I had paid a downpayment of $2,000). The transcript of the DOT hearing, at page 89, indicates that Mr. Howard

admitted that the State was unable to obtain clear title to this parcel due to my interests and the fact that I was in possession at the time. (*See,* Exhibit "F")

Of course, since the DOT Hearing was never reconvened, and since I was never permitted to either cross-examine the State's witness or to present affirmative proof of my own, I have not had the opportunity to definitively demonstrate that I am properly in possession of this property. No condemnation proceedings are pending respecting this parcel, and I am properly in possession. Therefore, I believe my rights have been denied because the State has refused to provide me with an outdoor advertising permit to maintain my billboards on this land.

13. Parcel #L22B is indicated by the letter "G" on Exhibit "D". A condemnation judgment on this parcel in favor of the State was entered by the Superior Court on April 12, 1972. The Superior Court prohibited my attorney from questioning the State witnesses on any issue other than value of the property. Accordingly, the judge indicated that other proceedings should be instituted in order to challenge the DOT's arbitrary and discriminatory exercise of its condemnation authority. To date, however, no other forum, whether judicial or administrative, has permitted me to raise such issues despite my determination to do so.

In any event, the judgment regarding this parcel only gave the State title to that portion of the land located within a depth of 60 feet from Route 72. I continue to be the owner of the property immediately adjacent to that portion of the land for a depth of 29 feet. Notwithstanding my clear and undisputed ownership of

this 29 foot depth adjacent to the lot condemned by the State, Defendants have nonetheless refused to provide me with outdoor advertising permits in order to maintain billboards upon the 29 foot depth which I undisputedly own, in violation of my constitutional rights.

14. Parcel #L22C is identified by the letter "F" on Exhibit "D". With respect to this parcel, the State obtained a judgment condemning land at a depth of 100 feet from Route 72, even though adjacent parcels to the east (*See,* Exhibit "D") were condemned only to a depth of 60 feet. Thus, the DOT arbitrarily singled out my property for descriminatory treatment. When I attempted to raise this issue at the condemnation hearing, the judge indicated that he would not hear this issue and stated that other proceedings should be instituted to raise this claim. Of course, as set forth above, I have been frustrated continually in my efforts to raise such claims.

As condemned by the State, this parcel extends for a depth of 100 feet from Route 72. I am the owner of that portion of the land beyond the 100-foot depth immediately adjacent to this parcel, and the State does not claim otherwise. Accordingly, I am entitled to obtain outdoor advertising permits and to maintain billboards on my property beyond the 100-foot depth. Notwithstanding this, the State has refused to process or to grant outdoor advertising permits to me for this purpose, in violation of my constitutional due process rights.

15. Parcels #L17G, L17E and L17D are identified by the letters "D" and "E" on Exhibit "D". Although the State instituted condemnation proceedings against these parcels on January 6, 1970 it never included the value of

existing billboards on the premises even though the State's condemnation maps clearly showed the presence of such billboards. Accordingly, I was denied just compensation in the case of these parcels.

Moreover, the State invidiously discriminated against me with respect to the condemnation of these parcels because, as indicated by Exhibit "D', it did not condemn adjacent parcels nor did it condemn the land lying behind parcels #L17E and L17D. The land in the rear of these parcels is owned by Herbert Shapiro, and practically every parcel of land owned by him in this area has been abandoned for condemnation by the State. Clearly, the State engaged in discriminatory application of its condemnation authority in this case.

16. Parcel #L11B is identified by the letter "A" on Exhibit "D". Notwithstanding the fact that I had a billboard on this parcel, it was condemned by the State as vacant land on November 24, 1969. Although I purchased this property in 1968 for $3,800, the State posted only $1,000 as payment in full as a result of the condemnation judgment on February 4, 1971. As a result I was denied just compensation to which I am entitled.

Moreover, although my land was condemned under the guise of highway beautification, property adjacent to mine was removed from the proposed taking and a gas station was allowed to be constructed. Such action was completely contrary to the sworn Affidavit of Clarence R. Pell, a landscape architect for the Department of Transportation, which is dated May 24, 1969 and was filed in the matter of *Wes Outdoor Advertising* v. *Goldberg*, Dkt. No. L13980-68 PW (Law Div., Ocean Co.). In his Affidavit, a copy of which is attached as Exhibit "G", Mr. Pell indicates that "The Department of

Transportation has every intention of proceeding with condemnation for the acquisition and will use [two specific parcels of land adjacent to parcel L11B] for landscaping purposes." Notwithstanding this Affidavit, two gas stations were allowed to be constructed upon the parcels in question subsequent to Mr. Pell's Affidavit. Thus, my land was taken for landscaping purposes whereas adjacent land was permitted to be used for the construction of gas stations. This is but another application of the DOT's discriminatory application of its condemnation authority with respect to my land.

17. The facts set forth above will be further documented if a full trial is conducted in this case. I believe that the above indicates that material issues of fact are present in this case respecting the title to the parcels of land in question and the issue of my entitlement to outdoor advertising permits. Accordingly, I respectfully request that summary judgment be denied to Defendants, and that I be granted the right to discovery under the Federal Rules as well as a full trial on the merits.

WESLEY K. BELL
Wesley K. Bell

SWORN AND SUBSCRIBED TO BEFORE ME
this 27th day of July, 1982.

ELIZABETH S. POINSETT
Elizabeth S. Poinsett

***Combined Communications Corp. v. City and County of Denver*, Opinion of District Court, March 7, 1975**

IN THE DISTRICT COURT IN AND FOR THE
CITY AND COUNTY OF DENVER
STATE OF COLORADO

Civil Action No. C-41119
Courtroom 11

COMBINED COMMUNICATIONS
CORPORATION, *et al.*,

Plaintiffs,

vs.

CITY AND COUNTY OF DENVER, *et al.*,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This opinion will set out this Court's Findings of Fact and Conclusions of Law as required by Rule 52(a) C.R.C.P. Since this action for declaratory judgment and injunctive relief involved ten different claims for relief, testimony from almost forty witnesses, a two week trial, and almost 200 pages of legal briefs,

This case questions the validity of the part of the 1971 Denver Sign Code (Ords. 94 and 95, Series of 1971) that deals with "outdoor general advertising devices."

The Court regrets that its opinion must be as long as this one is, but while it may not seem so on a cold, written record, the attitude and impression created by

the defendants and their witnesses (particularly the planners) at the trial convinced this Court that the defendants seek and would like to obtain an unprecedented and apparently unlimited extension of their police power so that they can take any property which for one reason or another they believe to be unpopular. Under these circumstances, it seems important to spell out in detail why this Court believes such an extension in this case is invalid.

This Court feels that unless municipalities are to be given unbridled latitude to take property, and if the Constitution is to retain any meaning, then strong steps must be taken to advise the governments that this kind of attitude and action are unacceptable.

BURDEN OF PROOF

The plaintiffs' contend that the burden of proof should be upon the defendants to prove the validity of Ords. 94 and 95 by showing that the ordinances are required by a "compelling state interest." Plaintiffs recognize that the black letter Colorado law is that zoning ordinances are presumed to be constitutional unless the challenger establishes that such ordinances are unreasonable and arbitrary beyond a reasonable doubt. (*Stroud v. Aspen*, Colo. Sup.Ct. No. 26764 (March 3, 1975); *Baum v. Denver*, 147 Colo. 104, 363 P.2d 688 (1961); *Bird v. Colorado Springs*, 176 Colo. 32, 489 P.2d 34 (1971)), but plaintiffs assert that this rule should not apply because the Sign Code infringes upon their fundamental right of free speech and their fundamental right to do business. They also say that the Code totally prohibits a legitimate industry which shifts the burden of proof to the defendants.

Since this Court has concluded that Ords. 94 and 95 impinge upon the right to freedom of speech, there is authority in Colorado, *People v. Vaughan,* 514 P.2d 1318, 1322 (Colo. 1973), that the defendants must bear the burden of proving that the ordinances can be justified by an overriding state interest. However, *Vaughan* did not involve the validity of a zoning ordinance and this Court will not extend the holding of *Vaughan* to a zoning case in the absence of Colorado authority to that effect, even though it feels that the Vaughan principles should apply to zoning ordinances.

This Court is unpersuaded by the plaintiffs' citation of cases which suggest that the right to do business is a fundamental right which may not be limited in the absence of compelling state interests. See, *e.g., Corey v. Dallas,* 352 F. Supp. 977 (N. D. Tex. 1972); *Cianciolo v. Members of City Council,* 376 F. Supp. 719 (E. D. Tenn. 1974). Although Colorado cases have also recognized that there is a "right to work" and that the "right to remain in business (is) a valuable property right", these statements were not made in the context of shifting the burden of proof to the city or state. Were this doctrine applied literally, it would have the effect of shifting the burden to municipalities to prove a compelling state interest for every zoning decision that they make. This result would be clearly contrary to long standing Colorado precedent and is an unjustified extension of the "compelling state interest" doctrine.

The plaintiffs' argument that the totally prohibitory nature of Ords. 94 and 95 should shift the burden of proof to the defendants is a very appealing one and will be discussed in more detail later. Again, however, since there is no clear Colorado precedent for this position, this

Court has felt that it must abide by the doctrines relating to burden of proof as set forth in *Baum* and *Bird, supra.* Therefore, in weighing the evidence and determining the outcome of this case, this Court has required the plaintiffs to establish the invalidity of Ords. 94 and 95 beyond a reasonable doubt.

On this basis the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

A. *The Ordinances*

1. The Court finds that the City and County of Denver ("Denver") has had a comprehensive zoning ordinance for forty or fifty years and that for a large number of those years that zoning plan has included regulations of on-premise advertising signs as accessory uses to permitted uses by right while it has regulated off-premise advertising signs by permitting them only as uses by right in certain zoning districts.

2. As part of its long-range planning, in 1967 Denver adopted a "Comprehensive Plan", (Exh. 1), based on the concept that Denver should become a "city of excellence". This Plan discusses such aspects of city living as residential, business and industrial land uses, transportation, community facilities and so forth. Among its provisions the Plan states that "the reduction and elimination of arterial commercial strips is one of the prime land use objectives of this Plan", (p. 70), and calls upon the city to "prevent and eliminate all blight" (p. 248). In several places the Plan discusses the problem of outdoor advertising and signage and concludes that:

"There is a great need for improvement of the environment in other areas of the city through reasonable control of advertising signs—all of which is not to suggest complete elimination of advertising signs." (P. 286.)

3. During the 1960's increasing thought was given to the regulation of signs and billboards and toward the end of the '60's, the drafting of the Denver Sign Code began in earnest. It was not until the "April, 1970" draft of the proposed new Sign Code that the total elimination of outdoor general advertising devices was written into the Denver Sign Code, but from that date on the language prohibiting outdoor general advertising devices remained unchanged.

4. As it was finally adopted by the City Council on March 15, 1971, (and effective March 20, 1971) the Sign Code consisted of a series of seven separate ordinances (Ords. 89-95, 1971 Series; Exhs. AC to AI).

5. Ordinance 90 (Exh. AD) contains the definition of "outdoor general advertising device":

"619.270. Outdoor General Advertising Device: A sign relating to products, services or uses not on the same Zone Lot."

The same ordinance contains the definition of "sign":

"619.396. Sign: A sign is any object or device or part thereof situated outdoors or indoors which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means including words, letters, figures, designs, symbols, fixtures, colors, motion

illumination or projected images. Signs do not include the following: (1) Flags of nations or an organization of nations, states and cities, fraternal, religious and civic organizations; (2) merchandise, pictures or models of products or services incorporated in a window display; (3) time and temperature devices not related to a product; (4) national, state, religious, fraternal, professional and civic symbols or crests; (5) works of art which in no way identify a product. If for any reason it cannot be readily determined whether or not an object is a sign, the Department of Zoning Administration shall make such determination."

6. Ordinance 94 repealed six sections of the Zoning Code which had previously allowed the erection, maintenance and use of outdoor general advertising devices in zone districts B-4, B-5, B-6, B-8, I-1 and I-2. The effect of Ord. 94 is to prohibit the erection of any new (or used) outdoor general advertising devices anywhere in Denver and to make all existing outdoor general advertising devices non-conforming uses.

7. Ordinance 95 provided for the termination of all outdoor general advertising devices by adding to Article 617 of the Denver Zoning Code the following provision:

".1-4(6). *By Amortization.*

.1-4(6)(a). Non-Conforming Outdoor General Advertising Devices. The right to operate and maintain any non-conforming outdoor general advertising device shall terminate in accordance with the following schedule:

Any Outdoor General Advertising Device which on the date the device became non-conforming would cost the following amount to replace:	Shall be terminated within the following period after the outdoor general advertising device became non-conforming:
$0 to $3,000	2 years
$3,001 to $6,000	3 years
$6,001 to $15,000	4 years
$15,001 or more	5 years

.1-4(6)(b). Flashing, blinking, fluctuating or animated devices. The right to operate and to maintain a flashing, blinking, fluctuating or animated general outdoor general advertising device shall terminate within 30 days after the effective date of the schedule set forth in Section 617.1-4(6)(a) of this Code."

8. The defendants have repeatedly disclaimed any intention to enforce Ord. 95 until five years after its date of enactment. However, at least by that time Ord. 95 will require the plaintiffs to remove all of their existing outdoor general advertising devices in Denver or be subjected to possible fines and jail sentences for violation of its terms.

9. The joint effect of Ords. 94 and 95 will be to totally eliminate all standardized outdoor general advertising devices from Denver.

10. On December 27, 1971 the City Council passed Ordinance 538, Series of 1971, (Exh. AJ), which was an amendment to the Building Code to conform it to the new Sign Code.

B. *Effects of the Sign Code*

11. Ords. 94 and 95 do not ban all outdoor advertising. For example, there are presently existing more than 400 bus benches which carry outdoor advertising (Exhs. CA, PP-14, -15) and which are explicitly exempted from the operation of the Denver Sign Code (Exhs. AF, AN); buses continued to carry outdoor advertising throughout all areas and zones of the city and Denver received substantial income from those signs until the buses were sold in 1974 to the RTD which recently made the policy decision to reject most advertising from the sides of buses so that they could carry more of their own advertising; taxicabs carry outdoor advertising on all of Denver's streets; and Denver has even continued to renew advertising contracts on its own Mile High Stadium score board (although this sign would admittedly be taken down at the end of the 5 year termination period). Likewise any number of other forms of outdoor advertising will continue not to be covered. Only outdoor advertising placed on stationary structures will be eliminated.

12. Ords. 94 and 95 will not have any significant effect in reducing the number of signs. The only evidence on this subject presented to the Court indicated that the outdoor advertising structures which are banned only comprise about 2% of the existing signs, and maps prepared by the Denver Zoning Department showing the number of signs which would be permissible under the Sign Code show that even under the new Code there can be a very large number of signs erected. (Exhs. GE, GF)

C. *The Businesses*

13. The evidence in this case established, beyond any reasonable doubt, that the "sign industry" is in fact at least two separate and distinct businesses—the on-premise sign business and the off-premise sign business. (It may be, as suggested during the preliminary injunction hearing, that the outdoor advertising is itself two or three separate businesses, but such a determination is not necessary or relevant to the issues of this case.) This finding is not made on the basis of any theoretical philosophical concepts but is made purely on the basis of practical and functional distinctions between the two businesses.

a. The on-premise sign business caters almost exclusively to the sale and manufacture of signs for use on the premises of the customer's business whether the customer is a bank, motel, dry cleaning or other business. Virtually all of the flashing, blinking and neon signs are on-premise signs. With the exception of some franchise operations these signs are normally sold on a sign-by-sign basis to individual customers and are custom-made by the sign business. These companies have formed their own national organization.

b. The off-premise sign business, at least of the standarized type in which the plaintiff Combined Communications Corporation ("CCC") is principally engaged, is a very different business. The standardized business uses two principal sizes of faces (which are often jointly referred to as "billboards") which are standardized nationwide. The larger faces ("bulletins", "rotates" or "painted bulletins"), are basically 15 feet by 48 feet in size although they may have some additional

embellishments added to the top or sides of the fact. The evidence indicates that bulletins are mostly hand-painted by local artists and are sold on contracts running from three months to a year or more. Some of these are rotated from one location to another throughout the metropolitan area. Because of their size and expense they tend to be located at street intersections with heavier traffic volumes. These are sold to both national and local clients but are generally sold one at a time. The smaller of the standardized outdoor advertising devices (the "poster" or "poster panel") are 12 x 25 feet; covered with printed sheets of paper which are pasted to the face of the structure; normally sold for one month at a time; and sold to both national and local clients. Although posters may be sold one by one, they are normally sold in groups, or "showings", which may number from less than 20 boards to more than 100 boards, geographically spread throughout the metropolitan area and all carrying the same message. The standardized outdoor advertising CCC belong to a separate national organization, the Outdoor Advertising Association of America.

c. The structures upon which both bulletins and posters are erected can be dismantled and moved and re-erected in a new location when the need arises, as it does with some regularity such as when a billboard on an existing location must be relocated to allow for development of the original location, or because the lease is not renewed.

d. Although the on-premise and off-premise businesses are sometimes combined under one ownership, indeed as was done by Mullins Broadcasting Company, the predecessor of CCC, the testimony showed that these

businesses were and are run separately, with separate sales departments, separate production personnel and separate management.

e. From a functional standpoint the on-premise advertising business and the off-premise advertising business are different in their purposes, their clintelle, their sales methods, their production facilities and skills, and their national organizations. Not only are these two businesses functionally different, but historically they have been treated separately under the Denver ordinances and every court which has been faced with the argument that the two businesses are simply part of one industry has rejected that argument. *United Adv. Co. v. Raritan*, 93 A.2d 362, 365-366 (N. J. 1952); *Kelbro, Inc. v. Myrick*, 30 A.2d 523 (VT. 1943); *Markham Adv. Co. v. State*, 439 P. 2d 248 (Wash. 1968).

D. *The Plaintiffs' Actions*

14. During the time the Denver Sign Code was being drafted, and at the time of its adoption in March, 1971, most of the billboards in Denver were owned by Mullins Broadcasting Company ("MBC") and its operating division, Mullins Outdoor Advertising Company. MBC had been wholly owned by John C. Mullins but at the time of the adoption of the Sign Code was owned by the executors of his estate. Included among MBC's assets were also two television stations, two radio stations, one or two on-premise sign companies and a couple of other small holdings.

15. In May, 1971, CCC completed negotiations and signed a contract for the purchase of the stock of MBC from the executors. Uncontradicted testimony shows that the executors were only willing to sell the stock of

the entire company and were not willing to sell the assets of MBC piecemeal so that any purchaser who wanted the television stations and other properties would also have to purchase MBC's outdoor advertising assets.

16. When the purchase contract was executed in May, 1971, CCC was fully aware of the existence of the new Sign Code and of the potential impact it could have.

17. Due to delays in FCC approval of the transfer of the television and radio licenses, the closing of the MBC did not occur until February, 1972. Shortly thereafter CCC undertook an effort to obtain legislative revision of the Sign Code and even went to the extent of spending over $100,000 on a motion picture presentation which was presented to the Denver City Council. CCC submitted a proposed amendment to the Denver Sign Code in July, 1972, which went through its initial steps but then was stalled in Council, apparently awaiting the outcome of the *Art Neon* case in federal court, until July, 1973. The CCC amendment was then voted down by the Denver City Council. CCC still did not file suit, according to its uncontradicted testimony, because members of the Denver City Council advised it that as long as there was any kind of a case pending in Court there would be no hope for legislative relief which CCC still hoped to obtain if the favorable federal District Court opinion in *Art Neon* was affirmed in the then pending appeal.

18. Nonetheless, it is clear that CCC continued to prepare for the eventuality of having to file a lawsuit because it did end up filing its 100 paragraph, 48 page Complaint in this matter the day following the Tenth Circuit Court of Appeals' opinion which reversed the

Denver federal District Court's decision in the *Art Neon* case. (*Art Neon Co. v. Denver,* 347 F. Supp. 466 (D. Colo.), *rev'd,* 488 F.2d 118 (10th Cir. 1973)).

E. *Losses Attributable to Ords. 94 and 95*

19. CCC's outdoor advertising division in Denver, Eller Outdoor Advertising Co. of Colorado ("Eller"), employs 48 employees with a payroll of over one-half million dollars. Eller has sales slightly in excess of $2,000,000 per year and makes land lease payments in excess of $100,000 per year to persons on whose land it has erected billboards. The Denver Sign Code would effectively terminate those jobs since it would be difficult if not impossible to relocate those employees and would completely cut off the lease payments to the land lessors.

20. When the Sign Code was enacted Eller's predecessors owned 123 bulletins and 773 poster panels for a total of 896 outdoor advertising devices. Largely because of Ord. 94's prohibition of replacing boards which had to be removed in the ordinary course of business, this number had declined to 121 bulletins, and 734 posters or 855 billboards on February 10, 1972 when CCC purchased MBC. By the time of trial this number had decreased to 103 bulletins and 671 posters for a total of 774 devices.

21. This Court finds as fact that the loss to CCC by virtue of the Denver Sign Code will be very substantial.

a. According to the very careful and thorough appraisal performed by Mr. George L. Patchin, who appeared on the stand to be highly knowledgeable and totally credible, the fair market of Eller's signs which

were located in Denver as of the date of enactment of the Denver Sign Code was $4,600,000. (Although there was evidence of fair market value on other dates, the Court is of the opinion that the reasonableness of the ordinances must be tested by judging the facts as they would have appeared to the City Council on the date of the enactment of the ordinance and not as they appear at some later date.)

b. The Court further concludes that for the purpose of determining whether or not the losses inflicted on a private individual or company are "reasonable" the Court must look at the losses which the individual would truly suffer rather than just those which he might be able to recover had the city undertaken the approach of eminent domain. The Court agrees with Mr. Patchin's opinion that the true losses suffered by CCC for the fair market value of its billboards in March, 1971, would be $4,600,000 rather than merely the cost of replacement of those signs. One of the principal reasons that courts do not grant compensation for loss of good will and other business enterprise value in an eminent domain proceeding is that the business usually can relocate in a new location and rapidly recapture its preexisting business enterprise or "good will" value. This, of course, is not true in the case of the Denver Sign Code since Eller would not be able to recommence its business at all in Denver. However, even if the Court were to accept the defendant's argument that the value of the billboards should only be the cost of replacement value of $3,015,732, this Court would still conclude that the loss was very substantial!

c. Additionally, it would cost CCC $642,000 to remove its signs in Denver and there would be direct consequential damages in the reduction of value to the remainder of the Eller plant because of the loss of the Denver boards in the amount of $1,045,000. (This figure was on the basis of 1974 values, but should be close to the 1971 figure when inflationary increases are balanced against lost structures. When the 1974 Denver only figures are compared, this figure for consequential damages may even be too low for 1971 purposes.)

d. Although it seems clear that if the Denver Sign Code is upheld, Eller would undoubtedly lose many of the rest of its signs which are presently existing in surrounding metropolitan communities, the Court does not believe it is proper to take into account as part of the losses attributable to the Denver Sign Code the value of signs in surrounding areas which would have to be removed. Those ordinances and those signs are not directly in issue in this case and should not be considered by this Court in determining the losses to be suffered by Eller.

e. Against these losses it might be argued that the aftertax benefits to CCC (some $360,000) should be set off. However, since these gains occurred after the enactment of the ordinance and, in March of 1971, would have been speculative, it does not appear to the Court to be any more appropriate to credit these against the plaintiffs' losses than it would be to increase the plaintiffs' losses by valuing all of the 1971 billboards at inflated 1974 fair market values, a value which would show a substantially higher loss than the loss the Court has found.

f. The Defendants also argue that property which has been depreciated for income tax purposes can be taken without compensation because that property no longer has any value to the owner. The evidence makes it clear that at most CCC has only depreciated 20% of its initial investment in the boards which could, at most, only result in tax savings of 9.6% of the investment. Also, income tax depreciation rules have nothing whatsoever to do with true useful life or fair market value of property.

g. Therefore, the Court finds that the direct losses to CCC by virtue of the enactment of Ords. 94 and 95 are $6,287,000.

22. In addition to the monetary losses which CCC would suffer, the Court finds that CCC will also lose a principal means of exercising its constitutionally guaranteed right to free speech. This loss cannot possibly be valued in monetary terms but this Court believes that the law and the nation's history establishes that the right to freedom of speech is, in fact, invaluable. This loss will be more fully discussed later.

23. The Court also finds that abolition of all billboards will inflict clear and substantial, although not easily measurable, losses upon the public at large.

24. a. The Court finds from the unchallenged testimony that advertising performs a significant role in maintaining the strength and viability of a free enterprise system. It does so by providing the means of communication with the consuming public to inform them of new products in existing areas (a new brand of soap), and innovative products which have not heretofore existed (Xerox machines or hand held calculators),

thereby allowing new manufacturers and new products to make themselves known so that they can actively compete with existing and already established products.

b. Furthermore, the testimony undeniably established that freedom of speech as exercised through the mass media of communications could not exist as it does today if the media were not supported by the commercial advertising which they all carry. To eliminate the right to carry commercial advertising in any medium of mass communication is to effectively destroy that medium and the capability of that medium to carry information and messages of "classic" free speech.

c. The Court finds that standardized outdoor advertising is considered by advertisers and others to be a separate, unique and distinct form of conveying commercial advertising which has its own particular advantages over the other media of mass communications.

d. For these reasons, the Court finds that the abolition of standardized outdoor advertising in Denver would cause losses both to the commercial advertisers, and to the consuming public in Denver.

25. In addition to carrying commercial advertising, the Court finds that billboards in Denver have historically carried numerous messages which can be unquestionably classified as "pure" free speech. The medium has carried the messages relating to political campaigns, nonpolitical election issues, public service campaigns and organizations, traffic safety messages, messages for religious and minority groups, and other messages in the public interest. An impressive array of witnesses including the General Manager of one of

Denver's largest radio stations, the Chairman of the Board of Trustees of the Denver Museum of Natural History, the Supervisor of Communications for Partners, the Director of Public Information and Education for the Mile High United Way, a member of the Committee of Concern for Soviet Jewry, a past member of the United States House of Representatives from Denver, and a recruiter for manpower training programs for the minorities and poor all testified that their organizations and efforts would be injured by the abolition of billboards.

26. Beyond any reasonable doubt the public at large in Denver will suffer some losses both in the ability to communicate and in the effective functioning of its political and civic organizations because of the enactment of Ords. 94 and 95.

F. *Gains Attributable to Ords. 94 and 95.*

27. The Court heard substantial evidence relating to whether or not the public would benefit by the abolition of all billboards in Denver but finds that the gains to other than to the aesthetic sensibilities of some of the citizens are either nonexistent or cannot be attributable in any reasonable way to the removal of standardized outdoor advertising.

28. a. On the subject of traffic safety the plaintiffs called as witnesses three highly-qualified, nationally recognized and extremely knowledgeable witnesses; Dr. Ernest E. Blanche, Dr. Bruce J. Morrison and Dr. Slade Hulbert. The plaintiffs also called a witness who had personally examined over 13,000 Denver Police Department accident reports for the years 1972, 1973,

and the first seven months of 1974 which reports were selected because they would be most likely to show outdoor advertising devices or billboards as having been a factor in the accident.

b. On the other hand, the defendants called two of Denver's past traffic engineers, both of whom admitted that they had never performed any studies, read any studies or seen any facts which would support their opinions and neither of whom even knew what kinds of signs they were supposed to be giving opinions on. Although both witnesses were well-meaning and sincere, this Court, after observing their testimony, can give their testimony no weight.

c. The third witness called by the defendants had done a study of accident causation on less than 900 accidents in Tempe, Arizona in 1966, and asserted that he had found a relationship between the location of billboards and traffic accidents (although he had made no mention of such "fact" in his report). On rebuttal the plaintiffs produced testimony which destroyed his assertion that he had seen 14 accident reports that reflected billboards as a cause of accidents. This Court found his testimony incredible, not worthy of belief and entitled to no weight.

d. Based on the testimony of the witnesses presented to this Court the following facts were established beyond any reasonable doubt. No properly run or controlled study, whether done in the field or in the laboratory, has ever established that outdoor advertising devices are a factor in the causation of traffic accidents or that their removal would enhance traffic safety. Although none of the studies which have been done relate specifically and

solely to metropolitan city streets, based on the evidence in this case there is no reason to believe that this result would be any different on such streets.

e. Scatter charts prepared by Dr. Blanche which correlate the "inattention" accidents in Denver for three years against the location of billboards show no statistical correlation between the two.

f. Although mentioning a myriad of unusual causes for accidents, not one of the 13,000 Denver Police Department records about which testimony was produced indicated that a billboard or outdoor advertising device had been involved in the accident in any way.

g. Finally, the testimony and laboratory experiments of two highly qualified experimental psychologists, Drs. Morrison and Hulbert, established that because of complex psychological mechanisms in the operation of the human mind, the mere fact that outdoor advertising devices may be located along the roadside and within the possible field of vision of drivers, the existence (or non-existence) of these objects will have little, if any, effect upon traffic safety and, at most, no more effect than any other roadside feature which presently exists along the city streets.

h. For the foregoing reasons this Court concludes that traffic safety was not and is not a possible gain to the public to be derived from Ords. 94 and 95.

29. The Court finds that outdoor advertising devices are not, and do not create, nuisances.

a. The evidence was that billboards do not: cause or contribute to fires, cause or contribute to the accumulations of trash, serve as places of concealment

for criminals or the location of immoral acts, are frail in their construction, or create air pollution, water pollution, noise, disease or any other adverse factors.

b. There was no evidence from the Denver Department of Health and Hospitals, which is charged with enforcing Denver's nuisance ordinances (Exh. AX) that it had ever received any complaints of billboards being nuisances and indeed, the only evidence was that the Department had not received any such calls.

c. The only evidence that billboards are nuisances was the general statement by the Zoning Administrator that he had received telephone calls over the years complaining about billboards, but apparently these complaints were only that billboards were unslightly or "competed" with other signs. As this Court understands the existing Colorado law, this is completely inadequate to establish that outdoor advertising is in any way a nuisance. *Echave v. Grand Junction*, 118 Colo. 165, 193 P.2d 277 (1948).

30. The uncontradicted evidence was that for the past 25 years Denver has been growing at a slower rate than the surrounding metropolitan counties. Likewise, it is clear that Denver has a higher concentration of minorities, public assistance cases, families on social security income and families with lower incomes than the surrounding counties have. All of these matters are factors about which Denver can legitimately be concerned. However, the Court finds that these concerns are totally unrelated to Ords. 94 and 95. There was absolutely no competent or credible evidence to suggest that any of these problems facing Denver are caused by or related to the presence of billboards in Denver. The

fact remains that there are billboards in all of the surrounding counties also. Billboards have existed in Denver for 60 years when Denver was fast growing, prosperous and thriving. There is simply no nexus between billboards and welfare cases, or black families, or flight of the middle class whites. There was also no evidence that removal of all billboards would have the slightest affect on these factors.

31. Defendants asserted before trial that outdoor advertising devices had adverse effects on adjoining property values. However, the uncontradicted, unequivocal and persuasive testimony of Mr. Watson A. Bowes, a witness whose expertise in property appraisal has been previously recognized by the Colorado Supreme Court, was that the presence of nearby outdoor advertising devices has absolutely no effect on property values and that he has never heard of any recognized group which took that position. It would seem to have been an easy matter for the defendants to produce at least some expert witnesses to opine that billboards did have adverse effects on property values, if such were in fact the case, and the absence of any such testimony seems significant. In any case, this Court finds that billboards do not have any adverse effect on nearby property values.

32. Although defendants also claimed that the existence of billboards has an adverse effect on tourism, there was no credible evidence to support this contention. It is common knowledge that tourism has continued to rise in Denver over the years. This has apparently occurred notwithstanding the long existing presence of billboards. The Court cannot conceive, and was shown no factual evidence to show how billboards

would have any significant adverse effect since all of the major cities which compete for Denver's tourist business also have billboards. This Court finds that there is no connection between tourism and outdoor advertising devices in a major metropolitan city such as Denver.

33. Although the defendants shied away from making the explicit point that the removal of billboards would improve Denver's aesthetic quality, this concept seemed to underlie the testimony of several of the City's witnesses. Indeed, the Court finds that the removal of all billboards in Denver would be viewed by some of Denver's citizens as improving the aesthetic appearance of the City, as, indeed, banning all high rise buildings or tourists would be viewed with enthusiasm by some. However, the Court heard no evidence which would indicate that this feeling is widely held or that the removal of billboards in certain areas of town would have as much impact as the removal of billboards in other areas. There was certainly no evidence to suggest that the removal of 896 outdoor advertising devices would make a significantly noticeable aesthetic difference throughout the entire city.

(34. Although this Court has held the testimony of Dr. H. G. Whittington to be inadmissible, should the defendants appeal on that ground and should the appellate court find that this Court's ruling was erroneous, this Court will state its view of that evidence so that the appellate court will not need to remand the case for that purpose alone. Based on this Court's observation of Dr. Whittington and carefully listening to his testimony and the basis upon which he arrived at his opinion, this Court believes that Dr. Whittington's

opinion that billboards may cause mental illness is unfounded and not credible. Not only did Dr. Whittington state that he knew of no studies which had ever been done to connect billboards and mental illness, he knew of no studies which had been done to connect any specific physical objects in the urban environment with mental illness. Furthermore, it was clear from cross-examination that Dr. Whittington knew less about the subject than plaintiffs' counsel did. He admitted that he had placed part of his reliance on an article concerning an experiment which article had failed to state an important fact concerning the conduct of an experiment. When advised of the additional fact on cross-examination, Dr. Whittington admitted that that fact might well make a difference in the reliability of the study. Finally, it is clearly Dr. Whittington's view that virtually every physical object in the urban environment can cause increased stress, potentially, mental illness, an opinion which this Court finds totally unbelievable and unacceptable in the absence of far more expert knowledge and study that Dr. Whittington revealed.)

FINAL EVIDENTIARY RULINGS

The Court having heard arguments and received additional briefs on the following matters, the Court makes the following evidentiary rulings on matters which were reserved at trial:

1. Exh. EA (George Patchin's appraisal report) is admitted. The Court believes this report is unquestionably relevant, and in a trial to the Court, has no prejudicial effect by virtue of giving undue emphasis to any one witness' testimony. This is particularly true where the testimony is uncontradicted anyway. However,

this Court frankly has not read all of Exh. EA and only examined the charts and appendixes in Exh. EA in order to ascertain the kind of detail Mr. Patchin utilized in arriving at the opinions of values to which he orally testified.

2. The Court reaffirms its ruling excluding the testimony of Dr. H. G. Whittington. The Court still feels that Dr. Whittington was unqualified to give an expert opinion relating to any connection between outdoor advertising devices and mental health since he had absolutely no special expertise or study in that subject. Even if the Court had admitted his testimony, following his cross-examination, the Court would have completely disregarded his testimony as not being entitled to any weight.

3. Mr. Jock Bickert's testimony of the public opinion poll he conducted and Defendants' Exh. 10 (the written report of Mr. Bickert's poll) will not be admitted. First of all, the City has not stated why this poll and report is relevant to the question of whether or not Ords. 94 and 95 are a valid exercise of the police power throughout the entire City of Denver. Second, although many cases have held public opinion polls to be admissible, the Court has been unable to find any case in which questions such as the questions asked in this poll were allowed. The "universe" polled by Mr. Bickert appears to have no relevance to this case and the universe was admitted by both of defendant's witnesses not to be representative of the City at large. *Bank of Utah v. Commercial Security Bank,* 369 F. 2d 19, 27 (10th Cir. 1966). Furthermore, Exh. 10 is inadmissible because it is an incomplete report of the poll (*Ibid.*); this Court finds that the questions asked were biased and not phrased in such a way as to

obtain impartial responses (*General Motors Corp. v. Cadillac Marine & Boat Co.*, 226 F. Supp. 716 (W.D. Mich. 1964), and see Roper, Public Opinion Surveys and Legal Proceedings, 51 ABAJ 44 (1965)); and the City has failed to provide the names of any of the persons who were interviewed, the names of the persons who took the interviews, or the worksheets showing what was reported by the interviewers. *Sears, Roebuck & Co. v. All States Ins. Co.*, 246 F. 2d 161 (5th Cir. 1957); *People v. Franklin Nat'l Bank*, 105 N.Y.S.2d 81, 91 (Sup. Ct. 1951).

CONCLUSIONS OF LAW

As will be explained hereafter, the Court concludes that both Ordinances 94 and 95 are unconstitutional beyond any reasonable doubt. However, there are several of the plaintiffs' contentions which cannot be upheld and these will be discussed first before discussing the invalidity of the ordinances. The Court concludes as follows:

1. *Plaintiffs do not have standing to attack the short amortization period in §617.1-4(6)(b).* All of the testimony to the validity or invalidity of §617.1-4(6)(a) insofar as that subsection relates to amortization of nonconforming outdoor general advertising devices. Not only was no testimony specifically directed to §617.1-4(6)(b), but the plaintiffs' own evidence indicated that they have no flashing, blinking, fluctuating or animated devices in Denver at this time. Furthermore, there has been no suggestion that the plaintiffs have any desire to have any such signs. Therefore, the Court concludes that the plaintiffs have not shown sufficient standing to attack §617.1-4(6)(b) of the Revised Municipal Code, which was one part of Ord. 95.

2. *Assertion that Ord. 95 violates Equal Protection Clause is moot.* Also with respect to Ord. 95, the plaintiffs contend that the amortization section's subdivisions violate the Equal Protection Clause of the United States Constitution since they are arbitrary and irrational. However, on numerous occasions the defendants, through both the City Attorney's Office and through the Zoning Administrator, Anthony Jansen, have taken the position that because of the holding of the *Art Neon* case (*Art Neon Co. v. Denver,* 488 F.2d 118 (10th Cir. 1973)), they will not enforce the amortization provision prior to the expiration of five years from the date of enactment of Ord. 95. This Court concludes that the position which the City has taken renders the plaintiffs' argument moot and thereby obviates any need for a decision on that question at this time.

3. *Ord. 95 is not barred by equitable estoppel.* Plaintiffs assert that Ord. 95 is barred by the doctrine of equitable estoppel, and cites in support of that position *Stoner McCray System v. Des Moines,* 78 N.W.2d 843 (Iowa 1956), and several Colorado cases, *e.g., Crawford v. McLaughlin,* 172 Colo. 366, 473 P.2d 725 (1970). As stated in *Crawford v. McLauglin, supra,* "The doctrine of equitable estoppel bars a municipal corporation from enforcing an obligation by taking a position contrary to a *previous representation relied on by defendants* to their detriment." (my emphasis.)

Assuming, without deciding, that this doctrine would have barred enforcement of Ord. 95 against Mullins Broadcasting Company, which could have validly asserted that it had substantially relied on building permits issued to it by Denver, it is difficult to see how the plaintiffs here can state that they relied to their

detriment upon those permits. Ordinance 95 was enacted prior to the time that CCC entered into the contract with Mullins Broadcasting Company and CCC freely admits that it was cognizant of Ord. 95 at the time it entered into that contract. Although this Court does not believe that such timing prevents CCC from attacking the basic validity of the ordinance, it would appear that CCC was willing to risk the chance that the ordinances would be upheld. If this gamble turned out to be incorrect, this Court sees little reason why CCC should then be able to hide behind the equitable doctrine of estoppel. CCC cannot have its cake and eat it too. Furthermore, it would be somewhat unbusinesslike if the chances of the ordinances being upheld were not taken into consideration in the negotiation of the purchase price for the stock of Mullins Broadcasting. Although any reduction in price may have been slight or nonexistent, the Court sees no reason why the City should have been barred from enforcing the ordinances had CCC's judgment on the invalidity of the ordinances been incorrect.

4. *Ord. 94 is ultra vires.* The Court concludes that Ord. 94 is not authorized by and is beyond the scope of authority granted to the Denver City Council by the Denver Charter and is, therefore, an *ultra vires* act.

The Denver Charter grants power to the Denver City Council to regulate in the area of zoning. Section B1.13 authorizes:

> For the purpose of promoting health, safety morals or the general welfare of the community, the council of the City and County of Denver is hereby empowered to *regulate and restrict* the height, number of stories and size of buildings and other

> structures, the percentage of a lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes. (my emphasis.)

Plaintiffs assert that the Charter authority to "regulate and restrict" does not allow Denver to enact zoning legislation which absolutely prohibits a legitimate business. The outdoor advertising industry is, and this Court has found previously, a separate industry and Ord. 94 would prohibit the industry from the entire city.

The Colorado Supreme Court decision in *General Outdoor Advertising Co. v. Goodman*, 128 Colo. 344, 262 P.2d 261 (1953), seems to answer this question. In that case, the Supreme Court stated, with reference to a state statute which is virtually identical to the Denver Charter and in a case involving an attempt to prohibit the erection of billboads in commercial areas of Arapahoe County, that the authority to "regulate" the size of structures "certainly does not include any power, express or inherent, to prohibit." Also, in *Krier v. Walsenberg*, 26 Colo. App. 150, 141 Pac. 505 (1914), the Colorado Court of Appeals had stated that "The power delegated to a municipality to regulate and license a legitimate and useful occupation does not include the power to prohibit absolutely."

In *Canon City v. Merris*, 137 Colo. 169, 182, 323 P.2d 614 (1958), the Colorado Supreme Court stated: "Regulation generally involves permission to do something with restrictions placed on that permission" but pointed out that prohibition "leaves nothing for the city to regulate; it is not regulatory in the true sense of the term."

Additionally, even where dealing with businesses or structures which are nuisances or nuisances *per se* (which billboards in Denver are not), the Supreme Court has advised us that prohibition of those businesses or structures is not allowable unless "absolutely necessary." *Echave v. Grand Junction*, 118 Colo. 165, 170, 193 P.2d 177 (1948).

Although the City distinguishes the *General Outdoor* case from the Denver Charter because the statute in *General Outdoor* only allowed the County Commissioners to "regulate" whereas the Denver Charter allows the City to "regulate *and restrict*," this Court is unable to find any legal difference. *Stoner McCray System v. Des Moines*, 78 N.W.2d 843 (Iowa 1956); *Central Advertising Co. vs. Ann Arbor*, 218 N.W.2d 27 (Mich. 1974).

5. *The definitions of "outdoor general advertising device" and "sign" unconstitutionally delegate legislative authority to the Zoning Administrator.* The crucial word to both Ords. 94 and 95 is "outdoor general advertising device" which is defined as "a sign . . ." The term "sign" is defined as quoted earlier and is a remarkably all-inclusive definition which can be fairly paraphrased as, "any part of any object, regardless of its location, which is used to attract attention to anything by any means." There are five very limited exclusions from that definition, but there is little this Court can imagine which escapes the literal sweep of the definition. The City Council obviously recognized the overbreadth of its definition by adding a final sentence to the definition which states, "If for any reason it cannot be readily determined whether or not an object is a sign, the Department of Zoning Administration shall make such determination." However, the City Council failed to

provide any guidelines or standards from which a Zoning Administrator could determine what was and was not intended to be included and regulated.

As has been pointed out by the Colorado Supreme Court, "the test of constitutionality of a statute is not what has been done, but what, by its authority, may be done under it." *General Outdoor Advertising Co. v. Goodman*, 128 Colo. 344, 348, (1953). Under the definition of the word "sign," it would appear that an arbitrary Zoning Administrator (which Mr. Jansen is not) would have the authority to include an astonishingly broad category of items in the definition as was shown by the questions posed by plaintiffs to Mr. Jansen on cross-examination.

This ground of attack has been a peculiarly fruitful one for sign and billboard owners in Colorado. See, *General Outdoor Advertising, supra; Parkview Baptist Church v. Pueblo*, 139 Colo. 98, 336 P.2d 310 (1959). This Court concludes that it is impossible to reasonably distinguish the Denver ordinance definition from that zoning resolution which was invalidated in *General Outdoor Advertising Co., supra; Stroud v. Aspen*, Colo. Sup.Ct. No. 26764 (March 3, 1975); *People v. Stanley*, 90 Colo. 315, 9 P.2d 288 (1932); *Colorado Anti-Discrimination Commission v. J. L. Case Co.*, 151 Colo. 235, 250, 280 P.2d 34 (1962); *People v. Willson*, 528 P.2d 1315 (Colo. 1974); *Norate v. Zoning Board of Adjustment*, 207 A.2d 890 (Penn. 1965).

It is inconsistent with Due Process to provide such an overbroad, overinclusive definition and then hand over its enforcement to the executive branch, without standards or guidelines to assist it, or the public, in determining what is and is not prohibited conduct.

6. *Ord. 94 is an invalid taking of property without payment of just compensation.* This Court concludes that Ord. 94 violates the Fifth Amendment of the United States Constitution which provides that "nor shall private property be taken for public use without just compensation," and Article II, Section 15 of the Colorado Constitution which provides that "Private property shall not be taken *or damaged*, for public or private use, without just compensation."

Both the Colorado Supreme Court and the United States Supreme Court have held that the right to *use* property is a property right which is protected by the state and federal constitutions. *Western Income Properties, Inc. v. Denver*, 174 Colo. 533, 485 P.2d 120 (1971); *Buchanan v. Warley*, 245 U. S. 60, 74 (1917); *National Board of WMCA v. United States*, 395 U.S. 85 (1969). Ord. 94 prohibits the relocation and continued use of existing billboard structures even though they may still have substantial usable life left. It seems clear under Colorado law that zoning ordinances which preclude the use of property for any purpose to which it is reasonably adapted and foreclose any reasonable use of the property are confiscatory and invalid. *Baum v. Denver*, 147 Colo. 104, 363 P.2d 688 (1961); *Cherry Hills Village v. Trans-Robles Corp.*, 509 P.2d 797 (Colo. 1973); *Fort Collins v. Dooney*, 496 P.2d 316 (Colo. 1972).

Although a few small towns have been allowed to prohibit billboards (or any other business) throughout their basically residential communities, *Murphy, Inc. v. Westport*, 40 A.2d 177 (Conn. 1944); *United Advertising Corp. v. Metuchen*, 198 A.2d 447 (1964), this Court knows of no case in the United States which has upheld the total prohibition of billboards in a metropolitan city.

Not only has the Colorado Supreme Court condemned previous efforts to abolish billboards, *Curran Bill Posting & Distrib. Co. v. Denver*, 47 Colo. 221, 107 Pac. 261 (1910); *General Outdoor Adv. Co. v. Goodman, supra*, but also every other court to have been faced with the issue has reached the same conclusion. *Stoner McCray System v. Des Moines, supra; Varney & Green v. Williams*, 100 Pac. 867 (Calif. 1909); *Norate Corp. v. Zoning Board of Adjustment, supra; Central Advertising Co. v. Ann Arbor, supra; Daikeler v. Zoning Board of Adjustment*, 275 A.2d 696 (Penn. Comm. 1971); *Wolverine Sign Works v. Bloomfield Hills*, 271 N.W. 823 (Mich. 1937); and see *Escondido v. Desert Outdoor Advertising, Inc.*, 505 P.2d 1012 (Calif. 1973).

Billboards are not alone in the judicial scrutiny to which an absolute prohibition will be given. This Court is not aware of any case which has upheld the complete exclusion of any business which is a legitimate and previously existing business in a metropolitan area. *E.g., Bzovi v. Livonia*, 87 N.W. 2d 110 (Mich. 1957) (drive-in theatres); *Appeal of Girsh*, 263 A.2d 395 (Penn. 1970) (multiple unit apartments); *Beaver Gasoline Co. v. Zoning Hearing Board*, 275 A.2d 702 (Penn. 1971) (gas stations); *Canover v. Jolly*, 177 S.E.2d 879 (N.C. 1970) (mobile homes); *Wollam v. Palm Springs*, 379 P.2d 481 (Calif. 1963) (sound trucks).

(As mentioned above, the plaintiffs have urged that the total prohibition of an existing, legitimate business should cause a shift in the burden of proof to the city to establish why it is a valid exercise of the police power. Although this Court has not required the defendants to meet any such burden and has required the plaintiffs to meet a burden of proof beyond a reasonable doubt, this

argument seems valid. This is particularly true in view of the cavalier attitude which the planners who testified in this case demonstrated in their regard for private industry and property. The planners had no hesitation in stating that they felt that a city should have the right to abolish any business it wants, unless the business could establish (beyond a reasonable doubt?) that it was essential to the public health, safety and welfare. This Court has the strong feeling that the only way to make them realize that the Fifth Amendment does not tolerate such casual disregard of private property rights, is to force the City to think out its prohibitions sufficiently so that it will only engage in such activity where it is truly necessary to the public health, safety and welfare. This has been done in Pennsylvania and the rationale for such an approach seems persuasive to this Court. Thus, in *Daikeler v. Zoning Board of Adjustment, supra*, the Pennsylvania Court of Appeals pointed out:

> In considering the effect of total prohibition, deeper perception is required than the ordinary scrutiny to which specific areas or sectors are subjected. 'The municipal zoning power for zoning particular purposes absolutely to forbid a use in a particular district ordinarily presupposes the allowance or permission of that use in another district, and the complete exclusion or prohibition of any use not inherently obnoxious must be regarded as of doubtful validity.'

In *Beaver Gasoline Co. v. Zoning Hearing Board, supra*, the Pennsylvania Supreme Court stated:

> In situations involving the total prohibition of otherwise legitimate land uses, which by common experience, appear to be as innocuous as the land

> use here contested (a gasoline station), the applicant has met his burden of overcoming the presumption of constitutionality by showing the total ban. Thereafter, if the municipality is to sustain the validity of the ban, it must present evidence to establish the public purpose served by the regulation.

This seems to be the unspoken position of the Colorado Supreme Court where in numerous cases the Court has stated that zoning ordinances are valid "unless it is shown that if the ordinance is enforced the consequent restrictions will preclude the use of property for any purpose to which it is reasonably adopted." *Baum v. Denver*, 147 Colo. 104, 363 P.2d 688 (1961). See also, *Denver v. Thrailkill*, 125 Colo. 487, 244 P.2d 1074 (1952) where the Colorado Supreme Court stated, "Since the ordinance would unquestionably put plaintiffs out of business, it must be declared unconstitutional *unless it can be justified* as a valid exercise of the police power." (my emphasis.)

Even if Ord. 94 is not a taking of property without compensation as a matter of law because of its totally prohibitory aspects, it is invalid since it is not a reasonable exercise of the police power. It is clear in Colorado that, "Governmental regulation of business or restraints upon freedoms must be *reasonably essential and necessary* in the public interest." *Denver v. Thrailkill, supra*, and that:

> under the police power, zoning ordinances are upheld in posing limitations upon the use of land, provided, however, that the regulations are reasonable, and provided further that the restrictions in fact have a

> substantial relation to the public health, safety, or general welfare. *Western Income Properties, Inc. v. Denver*, 174 Colo. 533, 485 P.2d 120 (1971).

It is this Court's conclusion that Ord. 94 is neither reasonable nor does it "in fact have a substantial relation" to the public health, safety, or general welfare.

In virtually all cases which have discussed regulations relating to billboards under challenges that the regulations were invalid exercises of the police power, the courts have held that the question of reasonableness is to be determined by, among other things, balancing the public gains against the private losses. *National Outdoor Advertising Co. v. Monterey*, 464 P.2d 33 (Calif. 1970); *Grant v. Baltimore*, 129 A.2d 363 (Md. 1957).

Although this has the effect of sometimes forcing a court to engage in balancing apples against checkerboards, in this case the balancing test is easy because the private losses and public losses are clearly so great and the public gains are so clearly negligible or nonexistent that it would be impossible for this Court to conclude as a matter of law that Ord. 94 is reasonable. This is true notwithstanding the ordinance's presumption of validity. Furthermore, under the evidence which was presented to this Court, it is impossible for this Court to find *any* "substantial relation" or nexus between the prohibition of billboards and the purported problems of Denver, or to find that the total prohibition of billboards is "essential and necessary" to any interest of Denver which has been demonstrated or hypothesized.

By urging that this abolition of an entire industry is reasonable, the defendants, in this Court's opinion, are asking the authority to abolish any business any time

they want with no more reason that some people find the industry to be unappealing since, therefore, the existence of the industry might somehow add to the difficulties of the core city area.

The Colorado Supreme Court has recognized only a couple of weeks ago that matters of environmental concern are appropriately to be considered in the balance of determining whether an action is a valid police power act. *Stroud v. Aspen*, Colo. Sup. Ct. No. 26764 (March 3, 1975). However, the clear, measureable and demonstrable adverse effects caused and the minor losses imposed in that case bear no relationship to the nebulous, unproven and speculative effects here or to the substantial losses imposed on the plaintiffs here.

As the Colorado Supreme Court stated in *Curran Bill Posting & Distrib. Co. v. Denver, supra*,

> But the prohibition of the erection of structures designed for advertising purposes within 10 feet of other structures, or from the lot line, however safe, sanitary and morally unobjectionable they may be, is an unwarranted invasion of private rights and cannot be tolerated. The necessities of the public do not require so drastic restrictions, and it is those necessities alone that test the reasonableness of such enactments.

See also, *Englewood v. Apostolic Christian Church*, 146 Colo. 374, 362 P.2d 172 (1961); *Baltimore v. Mano-Swartz, Inc.*, 299 A.2d 828 (Md. 1973); *HFH, Ltd. v. Superior Court*, 116 Cal. Rptr. 436 (Calif. App. 1974).

7. *Ord. 95 effects a taking of property without the payment of just compensation.* For many of the reasons stated in the foregoing Conclusion of Law, the Court also

concludes that the amortization provisions of Ord. 95 are, beyond a reasonable doubt, an unreasonable exercise of the police power and would effect a taking of property without the payment of just compensation in violation of the Fifth Amendment of the United States Constitution and Article II; Section 15 of the Colorado Constitution.

Although the plaintiffs argue strongly that the concept of amortization as it has been applied elsewhere in the United States to the termination of nonconforming uses may well be invalid in Colorado, the Court need not reach that argument in this case.

Under the facts established at the trial of this case, amortization as it is applied in Ord. 95 is clearly an unreasonable exercise of the police power. Assuming that amortization is a viable concept in Colorado, the rule as to when amortization will be upheld seems to have been well stated in the Annotation, "Validity of Provisions for Amortization on Non-conforming Uses," 22 A.L.R.3d 1134, where it is stated:

> A large number of decisions, mostly recent, from a variety of jurisdictions, support the proposition that amortization provisions are valid if they are reasonable . . .
>
> In those jurisdictions in which the rule on reasonableness has prevailed, certain factors have been stated to have special significance in determining whether an amortization provision is reasonable.
>
> Generally speaking, the courts have considered any circumstances bearing upon a balancing of the private gain against the private loss, with some

> courts laying particular emphasis on the length of the amortization period in relation to the investment, and with some courts placing particular importance on the relationship between the length of the amortization period and the nature of the use.
>
> In regard to the reasonableness of particular amortization provisions, the courts have usually weighed, either explicitly or implicitly, the resulting benefit to the public against the resulting loss to the individual landowner, upholding the particular provision where the public gain outweighed the private loss, but not where the private loss outweighed the public gain.

As stated by the Tenth Ciruit Court of Appeals in *Art Neon Co. v. Denver,* 488 F.2d 118:

> In the application of the reasonableness test to the legislative determination, the courts have used a variety of factors, and combinations thereof. These include the nature of the non-conforming use, the character of the structure, the location, what part of the individual's total business is concerned, the time periods, salvage, depreciation for other purposes, and the monopoly advantage, if any, resulting from the fact that similar new structures are prohibited in the same area.

Another phraseology of the tests which have been applied by the courts in determining reasonableness is found in *Harbison v. Buffalo,* 152 N.E.2d 42 (N.Y. 1958), where it is stated that the matters which should be considered are: the nature of the surrounding neighborhood, the value and condition of the improvements on the premises, the nearest area to which

the property owners might relocate, the cost of such relocation, any other reasonable costs which bear upon the kind and amount of damages which property owners might sustain, and whether the property owners might be able to continue operation of their business.

Finally, this Court must consider the statements of the Colorado Supreme Court in *Service Oil Co. v. Rhodus*, 500 P.2d 807 (Colo. 1972), which allowed the termination of a nonconforming gasoline station which was not rebuilt, as it would have been allowed to have been, within 90 days after it had burned down. The Supreme Court recognized that zoning restricts an owner's right to use his property and therefore constitutes a partial taking, but that zoning is constitutionally permissible so long as it is reasonable. The Court then stated:

> It is in this context that nonconforming uses arise. If a property owner has invested money in improvements in order to put his property to a particular use, which is lawful at that time, and if that use is subsequently outlawed by a zoning ordinance, *he loses not only the potential use but also the value of his investment. To impose this additional loss upon him is unreasonable,* and therefore he is entitled to continue to use his property as he did before. . . .
>
> The termination provision under consideration here, in order to be valid, must be reasonable and a justifiable exercise of the police power . . . Since in the instant case the investment value of the nonconforming use has been lost to the owner through accident and *not through action on the part of the municipality,* and since the ordinance allows

> the owner a reasonable period of time within which to begin to rebuild the destroyed property, it is a reasonable and valid ordinance. (my emphasis.)

Under any of these tests, as the facts have been produced at this trial, it is impossible for this Court to find that Ord. 95 is reasonable. The amortization period is much too short for the value of the property terminated; the locations are city-wide; the loss is total; the salvage is nonexistent; depreciation for tax purposes, though irrelevant, has been minor; monopoly advantage is not there; the property cannot be relocated; the business might well not be able to continue as a profitable operation; and the other costs and damages imposed by Ord. 95 are extremely high. The private losses of property are in excess of $6 million; the public losses are significant; and the public gains which must be offset against the losses are either nonexistent or minuscule at best.

Again, the City has cited no case in the United States which has authorized the amortization of property of the value involved in this case. This Court believes that to uphold Ord. 95 would be an unprecedented and constitutionally intolerable result.

8. *Ord. 95 violates state law on a matter of statewide concern.* The Highway Beautification Act of 1965, 23 U.S.C. §131, requires states to provide "effective control" of advertising devices along federal interstate or primary highways and provides that if the states fail to exercise "effective control" they will lose 10% of their appropriated federal highway funds. The Highway Beautification Act also requires the payment of just compensation for the removal of all outdoor advertising

signs which were lawfully erected. It is well established by now that the requirement of "effective control" includes the requirement for payment of just compensation and that the provision for just compensation does not allow the states to utilize their police powers in place of payment of actual just compensation. *Vermont v. Brinegar*, 379 F. Supp. 606 (D. VT. 1974); *Opinion of Attorney General Ramsey Clark*, 42 Opinions of the Attorney General 26 (1966); 55 Opinions of the California Attorney General 1, No. 71-102 (1972). Thus, it seems apparent that Ord. 95 will place the State of Colorado in a decision of noncompliance with the "effective control" requirements and would jeopardize 10% of the total state federal highway funds. This figure would run between $6 and $10 million a year.

Although the Colorado Enabling Legislation, C.R.S. 1973 §43-1-401 *et seq.*, clearly contemplates that local governments may engage in "regulation" and "control" of outdoor advertising, thereby making those matters subjects of local, as well as state-wide, concern, (C.R.S. 1973, §43-1-405, -423(5)), it also seems abundantly clear that the Colorado Legislature did not mean to allow any local government to jeopardize any of its federal highway funds. C.R.S. 1973, §43-1-407, -423(1) -423(3) and -423(5). Thus, since the matter is "not peculiarly municipal, but also concerns the public at large," *Bennion v. Denver*, 504 P.2d 350 (colo. 1973), and since the ordinance seems to conflict with the clear legislative command that funds not be jeopardized, Ord. 95 must be held to conflict with state law on a matter of state-wide concern and, therefore, it is invalid. *Ray v.*

Denver, 109 Colo. 74, 121 P.2d 886 (1942); *Canon City v. Merris*, 137, 169, 323 P.2d 614 (1958); *Wolverton v. Denver*, 146 Colo. 247, 301 P.2d 982 (1961).

9. *Ords. 94 and 95 violate plaintiffs' freedom of speech.* The Colorado Supreme Court has recently stated:

> Moreover, the First Amendment and Article II, Section 10 of the Colorado Constitution afford protection to all forms of communications, including moving picture films, which attempt to convey a thought or message to another person. *Houston v. Manerbino*, 521 P.2d 166 (Colo. 1974).

Nonetheless, Ords. 94 and 95 attempt to completely ban what has been shown to be a unique and distinct medium of communication. Although some courts have stated that purely commercial speech does not fall within the protection of the First Amendment, *e.g.*, *Valentine v. Chrestensen*, 316 U.S. 52 (1942), based on the evidence which has been submitted to this Court, this position seems untenable. First of all, it is clear that the outdoor advertising devices involved in this case perform a useful and substantial function in conveying commercial messages to the public as a whole. Secondly, it is equally clear that a sizable amount of the messages carried on the outdoor advertising structures are noncommercial in nature and, therefore, would be protected under anybody's definition of free speech. Additionally, when the Colorado Supreme Court has stated that, "The constitutional guarantee of freedom of speech and press protects not only the great literary works which we all revere, but also those questionable forms of literary expression which some of us abhor," *People v. Berger*, 521 P.2d 1244 (Colo. 1974), and when the United States

Supreme Court has held over and over again that all but the hard-core forms of sexual pornography are protected free speech, *Redrup v. New York,* 386 U.S. 767 (1967), it is difficult for this Court to conclude that the messages contained on billboards in Denver are not at least as protected as those forms.

It is recognized that freedom of speech is not an unlimited right and that reasonable regulations may be placed upon that right. However, the United States Supreme Court has stated that regulation of the right of free speech must "further an important or substantial governmental interest" and must be "no greater than is essential to the furtherance of that interest." *Procunier v. Martinez,* 94 S. Ct. 1800 (1974). There has certainly been no showing in this case of any important or substantial governmental interest, and it is inconceivable that the total abolition of outdoor advertising is no greater than is essential.

10. *Plaintiffs are not estopped to question the validity of Ords. 94 and 95.* The defendants assert that the plaintiffs are barred from challenging the effects of Ords. 94 and 95 because of the fact that they purchased the property which was affected by those ordinances after the enactment of those ordinances. They have cited no cases to support this position and the Court knows of none.

It is clear that the delays preceding the filing of this suit were occasioned not because the plaintiffs were dallying in asserting their rights, but occurred during a time when the plaintiffs were expending a great deal of effort and expense in attempting to obtain legislative relief and while they were waiting for what appeared to

be a favorable result on the attack of another part of the Denver Sign Code. Had that attack succeeded, it would have applied even more clearly to the plaintiffs and they legitimately felt that they could obtain relief from the City Council if the attack were sustained. Therefore, this Court concludes that there is no evidence of laches or unnecessary delay on the part of the plaintiffs.

Although this Court has found that the fact that the plaintiffs purchased the billboards after the enactment of Ords. 94 and 95 precludes them from raising equitable estoppel as barring these ordinances, there is no reason to believe that this fact should bar their attempt to challenge the overall validity of the ordinances. If this position were adopted, sellers of pornography who imported their materials after the enactment of the pornography laws could not challenge the validity of those laws and defendants who committed criminal offenses following the enactment of criminal laws could not challenge the validity of those laws. Indeed, the foregoing examples are particularly appropriate because, in this case, violations of Ords. 94 and 95 would invoke criminal sanctions. Therefore, this Court concludes that the plaintiffs are neither barred by the doctrine of laches nor are they estopped from raising the claims against Ords. 94 and 95.

11. *Plaintiffs are not entitled to their costs.* The Court concludes that the City and County of Denver is not liable for costs in an action for declaratory and injunctive relief against its ordinances. *County Commissioners v. Reno,* 53 Colo. 217, 124 Pac. 582 (1912).

ORDER

For the foregoing reasons,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Denver Ordinances 94 and 95 (except for §617.1-4(6)(b)), Series of 1971, and Denver Revised Municipal Code §619.270 and 619.396 are declared invalid; and defendants are permanently enjoined from enforcing any of said ordinances from this day forth.

For the same reasons, the defendants Counterclaim seeking enforcement of said ordinances is dismissed.

Each party will pay its own costs.

DATED THIS 7th day of March, 1975.

BY THE COURT,

ROBERT E. McLEAN
Robert E. McLean, District Judge

Opinion of Supreme Court of Colorado,
November 3, 1975

No. 26784

Combined Communications Corporation, an Arizona corporation, d/b/a Eller Outdoor Advertising Co. of Colorado, Lon F. Bends, Edythe Smookler and Margaret Katsaros v. City and County of Denver, a municipal corporation, Anthony D. Jansen, and John Stone

(542 P.2d 79)

Decided November 3, 1975.
Rehearing denied November 24, 1975.

Action by outdoor advertising company against city and two of its officials seeking to enjoin city from enforcing two ordinances: No. 94 which prohibited erection of new outdoor advertising signs, and No. 95 which required, over a period of time, the removal of existing signs of this character. District court ruled that the two ordinances were unconstitutional and permanently enjoined Denver from enforcing them and city appealed.

Affirmed

1. **Words and Phrases**—*Outdoor General Advertising Device— Defined.* An "outdoor general advertising device" is defined as "A sign relating to products, services or uses not on the same Zone Lot."

2. *Sign—Defined.* A sign is any object or device or part thereof situated outdoors or indoors which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or

location by any means including words, letters, figures, designs, symbols, fixtures, colors, motion illumination or projected images.

3. **Constitutional Law**—*Police Power—Exercise—Standard of Reasonableness.* Although, under its police power, there are situations in which a government may deprive the owner of a certain use of property and not be in violation of the Fifth Amendment prohibition against taking private property without just compensation, nevertheless, there must be a recognition that that exercise of police power can only be valid under—and only under—a standard of reasonableness.

4. **Nuisance**—*Public—Outdoor Signs—Negative.* Finding of court—that outdoor signs are not of themselves a public nuisance—is approved.

5. **Appeal and Error**—*Findings—Support—Evidence—Disturb—Review—Negative.* Findings of trial court which are well supported by evidence will not be disturbed on review.

6. **Municipal Corporations**—*Outdoor Advertising—Prohibition—Entire City—Ordinances—Unconstitutional.* Where the combined effect of certain city ordinances would be to eliminate the billboard business in Denver by enforcing the prohibition against the erection of any new billboards, and by forcing the removal of existing signs over a period of time, *held*, as such, these ordinances were unconstitutional; under a concept of reasonbleness, the charter authorization

of regulation does not permit Denver under its zoning power to prohibit the entire industry of outdoor advertising throughout the entire city.

Appeal from the District Court of the City and County of Denver, Honorable Robert E. McLean, Judge.

Davis, Graham & Stubbs, Richard P. Holme; Law, Nagel & Clark, Ralph M. Clark, for plaintiffs-appellees.

Max P. Zall, Robert M. Kelly, John L. Stoffel, Jr., for defendants-appellants.

Phillip Tocker, for amicus curiae Outdoor Advertising Association of America, Inc.

Weil, Lee & Bergin, Gilbert H. Weil, for amicus curiae. The Association of National Advertisers, Inc.

Raymond C. Johnson, Patrick J. Burke, for amicus curiae City of Lakewood.

En Banc.

MR. JUSTICE GROVES delivered the opinion of the Court.

In 1971 the City and County of Denver enacted two ordinances, numbered 94 and 95. These were a part of the Denver Sign Code. They related to off-premises outdoor advertising, *i.e.*, they did not apply to advertising as it pertains to a business on its own premises. No. 94 in effect prohibited the erection of new outdoor advertising signs. No. 95 required, over a period of time, the removal of existing signs of this character. Combined Communications Corporation (referred to as plaintiff), and persons associated with it in the outdoor advertising business, brought this action in the district court against Denver and two of its officials. The court

entered a judgment, in which it ruled that the two ordinances were unconstitutional and in which it permanently enjoined Denver from enforcing them. We affirm.

This matter was before us on an appeal from a preliminary injunction about a year ago in *Combined Communications Corp. v. City & County of Denver,* 186 Colo. 443, 528 F.2d 249 (1974). There we avoid the merits, concluding that any review should follow the completion of trial on the constitutional questions and the issue of a permanent injunction.

Such a trial was later held, following which the court made extensive findings of fact and conclusions of law, and decreed that Ordinances 94 and 95, Series of 1971, and Sections 619.270 and 619.396 (provisions contained in Ordinance 90) of the Denver Zoning Ordinance were unconstitutional.[1] It also permanently enjoined the enforcement of those ordinances.

The two ordinances were adopted in 1971, together with five other related ordinances. Ordinance No. 94 repealed certain sections of the Denver Zoning Ordinance, which had allowed "outdoor advertising

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[1] One part of Ordinance 95 (Revised Municipal Code §617.1-4(6)(b)) provides for a termination, within 30 days, of the right to operate or maintain a "flashing, blinking, fluctuating or animated outdoor general advertising device." The trial court found that, although the 30-day period was challenged as unconstitutional by the Combined Communications, the plaintiffs did not show sufficient standing to attack that provision since they neither have, nor was there any suggestion that they desired to have, such signs. This part of the court's order is unchallenged. For the purpose of this opinion, we treat the portion mentioned in this footnote as if it were not a part of No. 95.

devices" as a "Use by Right" in certain zone districts and would, except for Ordinance No. 95, result in making the devices non-conforming uses.

No. 95 provided for the elimination of the then existing devices over a period of five years in accordance with an "amortization" schedule depending upon the replacement value of the advertising device. Denver has disavowed any purpose to enforce No. 95 until the end of the 5-year period. Therefore, we treat No. 95 as if all signs are to be eliminated at—and only at—the expiration of that period.

[1,2] An "outdoor general advertising device" is defined as, "A sign relating to products, services or uses not on the same Zone Lot." Ordinance 90, 1971 Series, §619.270. "Sign" is defined in the same ordinance as follows:

"Sign: A sign is any object or device or part thereof situated outdoors or indoors which is used to advertise, identify, display, direct or attract attention to any object, person, institution, organization, business, product, service, event or location by any means including words, letters, figures, designs, symbols, fixtures, colors, motion illumination or projected images. Signs do not include the following: (1) Flags of nations or an organization of nations, states and cities, fraternal, religious and civic organization; (2) merchandise, pictures or models of products or services incorporated in a window display; (3) time and temperature devices not related to a product; (4) national, state, religious, fraternal, professional and civic symbols or crests; (5) works of art which in no way identify a product. If for any reason it cannot be readily determined whether or

not an object is a sign, the Department of Zoning Administration shall make such determination." §619.396.

The combined effect of 94 and 95 would be to eliminate the billboard business in Denver, by enforcing the prohibition against the erection of any new billboards, and by forcing the removal of existing signs.

The trial court's order declaring the ordinances unconstitutional was predicated upon several grounds: that Ordinance No. 94 was beyond the scope of authority granted to the Denver City Council by the Denver Charter and was therefore an *ultra vires* act; that the definitions of "outdoor general advertising device" and "sign" contained in the ordinance unconstitutionally delegates legislative authority to the Zoning Administrator; that Ordinances 94 and 95 constitute a taking of property without just compensation violative of the Fifth Amendment of the United States Constitution and of Article II, Section 15 of the Colorado Constitution; that Ordinance 95 violates state law on a matter of state-wide concern; and finally, that Ordinances 94 and 95 violate the plaintiffs' freedom of speech.

Any express authorization for Denver to act in this area is to be found in the following provision of Denver's charter:

"For the purpose of promoting health, safety, morals or the general welfare of the community, the council of the City and County of Denver is hereby empowered to *regulate and restrict* the height, number of stories and size of buildings and other structures, the percentage of a lot that may be occupied, the size of yards, courts and

other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes." Section B1.13 [Emphasis added]

We are predicating our ruling in this opinion (1) upon the trial court's first conclusion above, that there was no authority to adopt No. 94, and (2) upon the inescapable conclusion that, if 94 fails, 95 must also.

Prior to a discussion of our ruling, however, we wish to mention the argument which has been made with great emphasis by and in behalf of Denver; the contention that these ordinances are justified under the *police power,* irrespective of the extent of Denver's power to regulate and restrict under the zoning provisions of the Denver charter.

[3] Although we agree that, under its police power, there are situations in which a government may deprive the owner of a certain use of property and not be in violation of the Fifth Amendment prohibition against taking private property without just compensation, *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922), nevertheless, there must be a recognition that that exercise of the police power can only be valid under—and only under—a standard of reasonableness. *Goldblatt v. Hemstead,* 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962).

Our ruling in this case, as to whether Denver's charter power to regulate gives it the power to prohibit, must be premised upon a concept of reasonableness. Therefore, whether one proceeds under a "police power" argument or under a "regulatory" argument, one proceeds down the same path—that of reasonableness.

Addressing the core question, initially we should pinpoint the nature of the matter being prohibited and the territorial extent of the prohibition. The nature of the thing is that the outdoor advertising industry here involved is a separate and distinct industry. This conclusion results from our affirmance of the following findings by the trial court:

"The evidence in this case established, beyond any reasonable doubt, that the 'sign industry' is in fact at least two separate and distinct businesses—the on-premise sign business and the off-premise sign business.

* * * *

'From a functional standpoint the on-premise advertising business and the off-premise advertising business are different in their purposes, their clientele, their sales methods, their production facilities and skills, and their national organizations. Not only are these two businesses functionally different, but historically they have been treated separately under the Denver ordinances. . . ."

There have been cited to us numerous cases of *prohibitions* being affected under *regulatory* authority in a segment or certain segments of a city. A prime example of this is the prohibition of some or all business from residential zones, which in appropriate cases is a legitimate exercise of the police power. *Los Altos Hills v. Adobe Creek Props., Inc.*, 32 Cal. App.3d 488, 108 Cal. Rptr. 271 (1973); *Oregon City v. Hartke*, 240 Or. 35, 400 P.2d 255 (1965). Exclusion of the billboard industry in a predominantly residential community has been upheld. *United Adv. Corp. v. Metuchen*, 42 N.J. 1, 198 A.2d 447 (1964).

[4] In contrast, here there is the prohibition of an entire industry throughout the entire area of a major city. Counsel has been bountiful in supplying hundreds of citations of authority. In all of these cases, there is not one that holds that, under the power of regulation, a separate and distinct industry—which does not constitute a public nuisance—can be prohibited throughout an entire city. Here, the court found in effect that outdoor signs were not of themselves a public nuisance, and we approve that finding.

[5] Although defendants argue that the billboard business is only one segment of the advertising business and not an industry in itself, the court's findings are well supported by the evidence presented by the plaintiffs, and will not be disturbed on review. *Alcove's, Inc. v. Pehr,* 161 Colo. 268, 421 P.2d 469 (1966); *Wilson v. Girley,* 145 Colo. 135, 357 P.2d 932 (1960).

Further, other courts which have addressed this problem have rejected the argument that the two businesses are simply parts of one industry. *Markham Adv. Co. v. Slate,* 73 Wash.2d 405, 439 P.2d 248 (1968); *United Adv. Corp. v. Raritan,* 11 N.J. 144, 93 A.2d 362 (1952); *Kelbro, Inc. v. Myrick,* 113 Vt. 64, 30 A.2d 527 (1943).

[6] Since the outdoor advertising industry is a separate and distinct industry, the effect of Ordinance 94 is to completely prohibit the improvement and extension of that industry in the entire city. Under a concept of reasonableness, the charter authorization of regulation does not permit Denver under its zoning power to prohibit this entire industry.

The trial court based its decision on several cases. One was *General Outdoor Advertising Co. v. Goodman*, 128 Colo. 344, 262 P.2d 261 (1953), in which it was held that the power to regulate does not include "any power, express or inherent, to prohibit." In that case the issue was whether zoning authority given county commissioners to "regulate the size of buildings or structures . . ." allowed the commissioners to pass a zoning resolution which would effectively exclude billboards in Arapahoe County. The enabling legislation allowed commissioners to "regulate." The only difference between the enabling legislation in that case and the charter authorization here is that here the city council is allowed to "regulate and restrict the height, number of stories and size of buildings and other structures. . . ." The city contends that the variation, resulting from the addition of the verb "*restrict*" allows the council to *prohibit*. As was the conclusion of the trial court, we are unable to find any significance here in the addition of the word "restrict." *See also Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958); *Krier v. Walsenburg*, 26 Colo. App. 150, 141 P. 505 (1914).

Ordinance 95, as limited by footnote 1, because it too has the effect of prohibition of an industry by mandating removal of existing signs throughout the city, is invalid because it is so intertwined with Ordinance 94. If there is no 94, 95 as written in effect becomes inoperative.

Judgment affirmed.

MR. CHIEF JUSTICE PRINGLE and MR. JUSTICE KELLEY dissent.

MR. JUSTICE ERICKSON does not participate.

Opinion—November 3, 1975.

MR. JUSTICE KELLEY dissenting:

I respectfully dissent. The majority has not addressed what I regard as the real issue in this case: Whether the City in the reasonable exercise of its police power may prohibit the erection of new off-premises, outdoor billboards. It is axiomatic that the City may, in the exercise of its police power, restrict or forbid the erection of particular structures or a particular use, where such restriction or prohibition is not arbitrary and unreasonable and bears a substantial relationship to public health, safety, morals, or general welfare. *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

Ambler also held that if the validity of a legislative classification for zoning purposes is fairly debatable, legislative judgment must be allowed to control. We said in *Nopro v. The Town of Cherry Hills*, 180 Colo. 217, 504 P.2d 344 (1973):

"As tempting as it sometimes may be, a court is without power to substitute its zoning philosophy for that of the zoning body; and this is so for practical as well as legal reasons."

The City postured its case to a large extent on the proposition that off-premise billboards created "visual pollution," and hazards to driving safety. The majority ignored this argument, as well as the assignments of error relating to the exclusion of evidence offered to establish the allegations.

The United States Supreme Court, on the matter of aesthetic considerations as a ground for the exercise of the police power, said:

"... The concept of the public welfare is broad and inclusive. [Cite omitted.] The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." *Berman v. Parker,* 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954).

Some of the state courts have recognized that aesthetic considerations alone may form the basis for the valid exercise of the police power. *State v. Diamond Motors, Inc.,* 50 Hawaii 33, 429 P.2d 825 (1967); *Oregon City v. Hartke,* 240 Ore. 35, 400 P.2d 255 (1965); *Jasper v. Commonwealth,* 375 S.W.2d 709 (Ky. 1964); *People v. Stover,* 12 N.Y.2d 462, 191 N.E.2d 272, 240 N.Y.S.2d 734 (1963); *Merritt v. Peters,* 65 So.2d 861 (Fla. 1953).

In order to cope with the problems of environmental deterioration in core cities, the governing bodies of cities must be permitted to take aesthetic values into consideration.

I recognize that the problem of banning outdoor billboards completely is compounded by the existence of conflicting interests and considerations. As pointed out in the majority opinion, the prohibition of outdoor signs would have an adverse effect on the sign business. The majority conclude that it would be destroyed. It, of course, would affect the property owners who lease the sites for the signs, and, perhaps, the businesses which use outdoor signs to advertise their products and services.

Therefore, conflicting with the desire of the Council to promote the aesthetic values of the City, are the various economic interests. These competing values must be balanced in determining reasonableness. Neither the trial court nor the majority attempted to strike a balance.

I would reverse and remand to the trial court to make a determination under the tests suggested herein.

I have nothing to say as to the reasonableness of the amortization ordinance, Number 95, except that amortization has been approved by respectable courts[2] as a valid method of satisfying the "just compensation" requirements of the Fourteenth Amendment. The majority apparently does not reach the issue.

No. 26976

Yvonne Brown v. The District Court in and for the Seventeenth Judicial District of the State of Colorado and Abraham Bowling, one of the Judges thereof

(541 P.2d 1248)

Decided November 3, 1975.

Original proceeding involving petition for mandamus setting forth that petitioner, who is indigent, has been charged with murder, aggravated robbery, and

[2] *National Adv. Co. v. Monterey*, 1 Cal.3d 875, 83 Cal.Rptr. 577, 464 P.2d 33 (1970); *Naegele Outdoor Adv. Co. v. Minnetonka*, 281 Minn. 492, 162 N.W.2d 206 (1968); *Markham Adv. Co. v. State*, 73 Wash.2d 405, 439 P.2d 248 (1968); *LaChapelle v. Goffstown*, 107 N.H. 485, 225 A.2d 624 (1967); *Moore v. Ward*, 377 S.W.2d 881 (Ky. 1964); *Larchmont v. Sutton*, 30 Misc.2d 245, 217 N.Y.S.2d 929 (1961); *Murphy, Inc. v. Board of Zoning App.*, 147 Comm. 358, 161 A.2d 185 (1960); *Grant v. Baltimore*, 212 Md. 301, 129 A.2d 363 (1950); *2 Rathkopf, Law of Zoning and Planning* 62-1, et seq.

conspiracy and requests that an order be entered requiring district court to provide investigatory, expert, and other services to her. Rule to show cause issued.

Rule Discharged

1. **Criminal Law**—*Services to Counsel—Indigent Defendant—Discretion of Court.* The granting or denial of a motion to provide supporting services to counsel for an indigent defendant in a criminal prosecution is a matter within the sound discretion of the trial court.

2. *Experts—Appointment—Denial—Abuse—Negative.* Trial court did not abuse its discretion by denying motion for appointment of experts made by indigent defendant—charged with murder, aggravated robbery and conspiracy—where no showing was made that such defense services sought by defendant were reasonable, necessary, or in any way helpful to her defense.

Original Proceeding

Gene A. Ciancio, Michael F. DiManna, for petitioner.

Floyd Marks, District Attorney, Brian T. McCauley, Deputy, for respondents.

Court Order, 45 Day Notice, May 29, 1969

ORDER MODIFYING JUDGMENT ENTERED HEREIN ON MARCH 24, 1969

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
OCEAN COUNTY
DOCKET NO. L-13980-68 P.W.

WES OUTDOOR ADVERTISING COMPANY, etc.,
Plaintiffs,

vs.

DAVID J. GOLDBERG, etc.,
Defendant.

Civil Action

THIS MATTER coming on to be heard in the presence of Hartman and Schlesinger, Attorneys for Plaintiffs-Defendants on Counterclaim, Jan M. Schlesinger, Esquire appearing, and Arthur J. Sills, Attorney General of New Jersey, attorney for the Defendant on Counterclaim, Royal B. Giffen, Deputy Attorney General appearing; and it appearing to the Court that good cause exists for the modification of the Judgment previously entered herein on March 24, 1969; and it appearing that counsel for the respective parties consent to the entry of this Order;

IT IS on this 29th day of May 1969

ORDERED that the Judgment entered herein on March 24, 1969 be and the same is hereby modified as follows:

Court Order, 45 Day Notice, May 29, 1969

Plaintiffs-Defendants on counterclaim may erect signs on land already cleared providing their agents, servants and employees does not destroy vegetation, clear additional land or interfere with its restoration, preservation or enhancement.

The permission granted Plaintiffs-Defendants on Counterclaim hereunder does not affect any rights which may be asserted by any state agency other than the Department of Transportation.

Any improvements made to the parcels in Exhibit A attached to the Judgment entered March 24, 1969 after the date of this Order are not to be considered as increasing the value of these parcels should a condemnation award be made. Plaintiffs-Defendants also are to remove any improvements made on these parcels at their expense upon forty-five (45) days notice should the State obtain a right of immediate possession.

s/ EDWARD V. MARTINO
J.S.C.

We hereby consent to the
entry and form of the
foregoing Order.

ARTHUR J. SILLS
Attorney General of New Jersey

By /s/ Royal B. Giffen
Royal B. Giffen
Deputy Attorney General

HARTMAN and SCHLESINGER
Attorneys for Plaintiffs-Defendants

By /s/ Jan M. Schlesinger
Jan M. Schlesinger

Court Order, 45 Day Notice, May 29, 1969.

EXHIBIT A

Designation on Stafford Township Tax Map		Designation on Department of Transportation General Parcel Property Map	
Block	*Lot*	*Parcel*	*Section*
67	8	L11B	6
145 (145B)	5	L15G	7
(145B)	9	L17G	7
	10	L17D	7
	12	L17F	7
	26	L22C	7
	26A	L22B	7
	32	L15H	7
	37	L17E	7
144(A)	27	L12D	7
146	25	L30C	7
147	2	L12E & L23E	7
	29	LR30D	7
	31	LR31D	7
158	10	L35D	7
298	1	TLE1F	8
	2	L5C	8
	3	L3E	8
	4	L3E	8
		L10N	6
		L16B	6
		L17C	6
		L18B	6
		L19B	6

Order Dismissing D.O.T. and State No. 77-1531
Judge Barlow, December 12, 1977

ORDER

UNITED STATES DISTRICT COURT
For the District of New Jersey

WESLEY K. BELL,

Plaintiff.

vs.

STATE OF NEW JERSEY; *et al.*,

Defendants.

Civil Action No. 77-1531.

Assigned to George H. Barlow, U.S.D.J.

This matter having been heard by the court upon motion and application of William F. Hyland, Attorney General of New Jersey, to dismiss the plaintiff's Complaint against the defendants, State of New Jersey and New Jersey Department of Transportation, for lack of jurisdiction and for failure to state a claim upon which relief could be granted, and this court having considered said application, motion, and the arguments of the defendants, and good cause appearing,

IT IS, on this 12 day of December, 1977,

ORDERED that the Complaint in this matter against the defendants, State of New Jersey and New Jersey Department of Transportation, be dismissed.

s/ GEORGE H. BARLOW
U.S.D.J.

[1] **Oral Opinion No. 77-1531 Judge Barlow**
March 6, 1978

ORAL OPINION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WESLEY K. BELL,

Plaintiff,

vs.

DOROTHY ANDRES, *et al.*,

Defendants.

Civil 77-1531.

Trenton, New Jersey

March 6, 1978

Before The Honorable GEORGE H. BARLOW, *USDJ*

1. Hearing on plaintiff's motion for preliminary injunction against defendants Mullen, Andres, Stolowski and Davidowski.

2. Hearing on plaintiff's motion for default judgment on all individual defendants, except Burnham and Anton.

3. Hearing on motion of all defendants to dismiss complaint and for costs and attorneys' fees.

APPEARANCES:

Hartman, Schlesinger, Schlosser & Faxon, For Plaintiff; By: Michael H. Malin (Pennsylvania Bar).

Oral Opinion No. 77-1531 Judge Barlow 3/6/78.

Berry, Summerill, Piscal, Kagan & Privetera, For Defendants Burnham and Anton: By: Jack Sahradnik.

[2] Richard J. Harcar, Deputy Attorney General, For all defendants except Anton and Burnham

and

Jeffrey M. Hall, Deputy Attorney General.

[3] * * *

THE COURT: The complaint in this action seeks relief pursuant to 42 United States Code sections 1983 and 1986. We note that an action will not lie under section 1986 unless a vaild claim exists under 42 United States Code section 1985. *Hahn v. Sargent*, 523 F.2d 461 (1st Cir. 1975), cert. denied 425 U.S. 904 (1976).

I find no allegation, as required by section 1985 that the defendants' actions were motivated by a racial or otherwise class-based invidiously discriminatory animus. *Griffin v. Breckenridge*, 403 U.S. 88, 102-103 (1971). Therefore, I can find no cause of action to have been stated as to section 1985. See *Carter v. Cuyler*, 415 F.Supp. 852, 857 (E.D. Pa. 1976); *Whetzler v. Krause*, 411 F.Supp. 523, 528 (E.D. Pa. 1976). Thus, for failure to state a colorable claim under section 1985, the plaintiff is entitled to no relief under section 1986. *Hahn, supra.*

Moreover, I find that even if the plaintiff could be deemed to have stated a cause of action under section 1986, it must be barred by that section's one-year statute of limitations.

Accordingly, defendants' application is granted as to the 1986 claim. Federal Rules of Civil Procedure 12(b)(6).

Oral Opinion No. 77-1531 Judge Barlow 3/6/78.

[4] Without a conspiracy count in the complaint, we now turn to the plaintiff's section 1983 claims. Under this section of the Civil Rights Act, a defendant may only be held liable for their personal deprivation of another's civil rights. *Bracey v. Grenoble*, 494 F.2d 566 (3d Cir. 1974).

The doctrine of respondeat superior does not obtain in section 1983 actions. *Hampton v. Holmesburg Prison Officials*, 546 F.2d 1077, 1082 (3d Cir. 1976). Defendants Kohl, Sagner, Goldberg, Burnham, Glaser and Davidowski are not alleged to have committed any specific acts against the plaintiff. Accordingly, as to them, the action must be dismissed.

The defendant Andres is mentioned in the complaint as having authored one letter wherein she admitted that the plaintiff was entitled to billboard permits. We find no valid section 1983 claim here, and the action is dismissed as to this defendant.

As to the defendants Pell, Mullen, and Cunningham, they are charged with acting to deprive the plaintiff of his civil rights back in 1968 and 1969. The defendants argue that the claims against them should be dismissed as barred by the Statute of Limitations. Under *Polite v. Diehl*, 507 F.2d 119 (3d Cir. 1974), I must apply the forum state's statute of limitations in section 1983 [5] actions. We agree with the defendants that New Jersey courts would apply a six-year statute of limitations here for malicious interference with business. See New Jersey Statutes Annotated 2A:14-1. Thus, these defendants' acts must be considered outside the appropriate limitation period, and the claims under section 1983 against them are hereby dismissed.

Oral Opinion No. 77-1531 Judge Barlow 3/6/78.

Next I look at the section 1983 claims leveled at defendant Stolowski. The acts allegedly committed by this defendant in violation of section 1983 are delineated in paragraphs 28, 31 and 32 of the complaint. These acts in paragraphs 28 and 31 allegedy occurred more than six years prior to the filing of the complaint in this case, and are therefore time-barred by New Jersey Statutes Annotated 2A:14-1.

In paragraph 32, the plaintiff alleges that Stolowski made false public statements concerning actions of the plaintiff. I find this allegation insufficient to state a cause of action under section 1983 and accordingly dismiss the action as to this defendant.

Lastly, I turn to the charges leveled at the defendant Anton. This defendant is charged in his capacity as Prosecutor of Ocean County with making a transcript of a criminal case unavailable for the [6] plaintiff's use. Prosecutors have been accorded broad immunity in section 1983 actions. *Imbler v. Pachtman*, 424 U.S. 409 (1976); *Jennings v. Shuman*, (3d Cir. slip opinion filed November 30, 1977). In light of our reading of the above cases, I find that Anton is entitled to immunity here. Accordingly, the action is dismissed as to this defendant under the Federal Rules of Civil Procedure 12(b)(6).

In light of the foregoing, accordingly the complaint must be dismissed as to all defendants in all respects.

Thank you, gentlemen.

MR. SAHRADNIK: For the record, the Statute of Limitations, the order does apply to William Burnham also?

THE COURT: Yes.

Oral Opinion No. 77-1531 Judge Barlow 3/6/78.

MR. HALL: Very briefly, I don't know if you mentioned the defendant Goldberg.

THE COURT: Submit an order.

MR. HARCAR: With prejudice?

THE COURT: Dismissal will be with prejudice.

MR. HARCAR: We had a motion also pending for reasonable attorneys' fees, which we feel—

THE COURT: I doubt I will grant that, but I will take it under advisement. There are still counterclaims involved in this case.

Pursuant to Section 753, Title 28, United States Code, the following transcript (illegible) an accurate record as (illegible) in the above entitled proceedings.

HELEN C. JOHNSON
Court Reporter

Order of Dismissal No. 77-1531,
Judge Barlow, March 16, 1978

MEMORANDUM DECISION.
UNITED STATES DISTRICT COURT,
DISTRICT FOR NEW JERSEY

UNITED STATES DISTRICT COURT
For the District of New Jersey

WESLEY K. BELL,

Plaintiff.

v.

STATE OF NEW JERSEY, *et al.*,

Defendants.

Civil Action No. 77-1531
Assigned to George H. Barlow, *U.S.D.J.*

This matter having been heard by the court upon the motions and applications of John J. Degnan, Attorney General of New Jersey, (Richard J. Harcar and Jeffrey M. Hall, Deputy Attorneys General, appearing), and Francis P. Piscal, Esquire, (John C. Sahradnik, Esquire, appearing), to dismiss the plaintiff's Complaint against defendants Dorothy Andres, Russell H. Mullen, John C. Kohl, Sidney Glaser, Clarence Pell, Vincent R. Stolowski, William Davidowski, David J. Goldberg, Alan Sagner, Joseph Cunningham, Martin Anton, and William Burnham, and Michael H. Malin, Esquire, of White and Williams appearing in opposition, and

Order of Dismissal No. 77-1531 Judge Barlow 3/16/78.

this court having considered said applications, motions, and arguments of counsel, and for good cause appearing,

IT IS, on this 16 day of March, 1978 ORDERED that the plaintiff's Complaint against the above-named defendants be dismissed with prejudice for the reasons stated in the court's oral opinion of March 6, 1978.

s/ GEORGE H. BARLOW, *U.S.D.J.*

Opinion of the Court, Third Circuit
No. 78-1578 January 24, 1979

UNITED STATES COURT OF APPEALS
For the Third Circuit

WESLEY K. BELL,

Appellant,

vs.

STATE OF NEW JERSEY c/o William F. Hyland, Attorney General of the State of N.J., State House, Trenton, New Jersey and DOROTHY ANDRES, RUSSELL H. MULLEN, JOHN C. KOHL, SIDNEY GLASER, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, DAVID J. GOLDBERG, WILLIAM BURNHAM, MARTIN ANTON, ALAN SAGNER, JOSEPH CUNNINGHAM and NEW JERSEY DEPARTMENT OF TRANSPORTATION.

Appeal from the United States District Court
For the District of New Jersey

(D. C. Civil No. 77-1531)

Argued December 11, 1978

Before GIBBONS, VAN DUSEN and ROSENN,
Circuit Judges

(Opinion Filed January 24, 1979)

Michael H. Malin, Esq.,
David E. Sandel, Jr., Esq.,
White & Williams,
Philadelphia, Pa.,
Attorneys for Appellant

Francis P. Piscal, Esq.,
John C. Sahradnik, Esq.,
Berry, Summerill, Piscal, Kagan &
Privetera, Toms River, N.J.,
Attorneys for Appellees
Burnham and Anton

John J. Degnan, Attorney General
of New Jersey;
Erminie L. Conley, Assistant Attorney
General—Of Counsel
Jeffrey M. Hall and Richard J.
Harcar, Deputy Attorneys General
—On the Brief
Trenton, N. J.,
Attorneys for Appellees Andres,
Mullen, Kohl, Glaser, Pell,
Stolowski, Davidowsky, Goldberg,
Sagner and Cunningham

OPINION OF THE COURT.

PER CURIAM:

This appeal is from a district court order dismissing with prejudice the complaint of Wesley K. Bell, filed July 26, 1977. That complaint alleged a conspiracy among defendants to put plaintiff out of business, in violation of the Federal Civil Rights Acts (42 U. S. C. §§1983 and

1986), by instituting actions against properties owned by or leased to plaintiff in an area zoned commercial in order to deny him advertising permits, to remove his signs illegally and to condemn discriminatorily 38 or 39 properties owned or leased by him without taking similar action against neighboring and adjacent properties devoted to similar commercial use. The actions of which complaint was made were alleged to have occurred between 1968 and 1970.[1]

[1] The alleged unconstitutional and discriminatory actions of defendants against the plaintiff include the following:

(a) removal of duly licensed signs;

(b) Arbitrarily condemning plaintiff's roadside property while leaving similarly situated property of his competitors untouched;

(c) arbitrarily redefining the state's riparian interest over plaintiff's land;

(d) oppressively executing judgments upon the plaintiff so as to paralyze his assets and render him defenseless to pending legal proceedings;

(e) denying permits for spurious reasons, without notice or an opportunity to be heard, or denying them in effect, by refusing to consider the application;

(f) cancelling permits for arbitrary reasons and without notice or opportunity to be heard;

(g) removing plaintiff's signs without resort to appropriate state procedures;

(h) engaging in false swearings before various state tribunals;

(i) engaging in a campaign of public defamation;

(j) pursuing a campaign of criminal prosecution against plaintiff for violation of various laws, while disregarding similar conduct by plaintiff's competitors;

(k) invoking the Highway Beautification Act in support of takings, where such takings are not eligible for the use of funds under the acts and diverting such funds for the purpose of harassing the plaintiff and destroying his business; and

(l) withholding from the plaintiff critical legal evidence in violation of state statutory and federal constitutional law.

(Footnote continued on following page.)

After filing in September 1977 an answer and counterclaim, the individual defendants, except for Anton and Burnham, filed in November 1977 a motion to strike their answer and counterclaim, which the court granted on November 21, 1977. Defendants Anton and Burnham separately filed answers and counterclaims in September and October 1977. The state defendants filed on February 15, 1978, a motion to dismiss the complaint.[2] In March 1978 defendants Anton and Burnham also filed a motion to dismiss the complaint. On March 2, 1978, the plaintiff filed a first amended complaint without permission of the court or consent of the defendants.

After argument, the court dismissed the complaint as to all remaining defendants on March 6, 1978,[3] stating that the dismissal was with prejudice and that it need not consider the first amended complaint filed four days before on March 2, 1978.

(Footnote continued from preceding page.)

Jurisdiction was based on 28 U. S. C. §§1331 and 1343. The jurisdictional paragraph of the first amended complaint alleged action in violation of 42 U. S. C. §1985(3), as well as 42 U. S. C. §§1983 and 1986. We assume, without deciding, that the amended complaint was effective as to all defendants remaining in the case on March 2, 1978, when it was filed.

[2] As a result of motions filed in October 1977, the complaint was dismissed in December 1977 as to the New Jersey Department of Transportation and the State of New Jersey.

[3] The court read from the bench its oral opinion in support of its oral order dismissing the complaint and directed counsel to submit a written order, which was filed on March 16, 1978. The court stated various reasons for its action (206a-209a).

We affirm the district court judgment because our review of the initial complaint and the first amended complaint shows that the applicable statutes of limitation require such dismissal of the claims under 42 U. S. C. §§1983 and 1986.

I. The applicable statutes of limitations

Since this action arises under the Civil Rights Acts of the United States, the federal statute of limitations controls where there is such a statutory limitation period provided for in the applicable Civil Rights Act. See *Holmberg v. Armbrecht*, 327 U. S. 392 (1946). 42 U. S. C. §1986 contains a one-year statute of limitations; thus it is clear that the district court order was correct in dismissing the claim under that section of Chapter 21, Title 42, containing the federal statutes on civil rights.

As to the claims under 42 U. S. C. §§1983 and 1985(3), the period of limitation "to be applied is that which would be applicable in the courts of the state in which the federal court is sitting had an action seeking similar relief been brought under state law." *Polite v. Diehl*, 507 F.2d 119, 122-23 (3d Cir. 1974). See also *Jennings v. Shuman*, 567 F.2d 1213, 1216 (3d Cir. 1977).

We agree with the district court that the New Jersey six-year statute of limitations for malicious interference with business contained in N.J.S.A. 2A:14-1 applies to the claim under 42 U. S. C. §§1983 and 1985(3).

II. The failure to allege with particularity events occurring within the statutory period which support the alleged causes of action

Those events within the compass of the Civil Rights Acts which plaintiff alleged in his initial complaint took place on or before March 2, 1970, when *W. Kingsley v. Wes Outdoor Advertising Co.*, 55 N.J. 336 (1970), was concluded.[4] These events fall outside the limitations period, and thus the initial complaint was time-barred.

The amended complaint did not cure this defect. This court has consistently held that conclusory allegations without supporting facts are not sufficient to make out a complaint under the Civil Rights Acts (particularly 42 U. S. C. §§1983, 1985 & 1986). See *Curtis v. Everette*, 489 F.2d 516, 521 (3d Cir. 1973), and cases there cited. Therefore, allegations in the first amended complaint that the state has "delayed and procrastinated" in taking action from "1968 to date" or "1972 to present" (58a) are insufficient without allegations of the act, with dates, of which complaint is made.

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[4] The purported defamation by defendant Stolowski in February 1976 is an allegation not covered by 42 U S. C. §1893, since Stolowski was not acting under color of state law at that time. See *United States v. Classic*, 313 U. S. 299, 326 (1940); *Sykes v. State of California (Dept. of Motor Vehicles)*, 497 F.2d 197 (9th Cir. 1974). By 1976, responsibility for regulation and enforcement of outdoor advertising in New Jersey had been transferred to the New Jersey Department of Transportation, whereas it is conceded that Stolowski continued as an employee of the Division of Taxation, Department of the Treasury. See N.J.S.A. 27:1A-52 (7a and 45a).

III. The failure to allege fraud in the concealment of the causes of action with particularity

Plaintiff also invokes the equitable doctrine that fraudulent concealment of material facts tolls the running of the statute of limitations, in support of his contentions that his claims are not time-barred. *See, e. g., Holmberg v. Armbrecht*, 327 U.S. at 397.

In paragraph 39 of the initial complaint plaintiff alleges (19a):

> "The defendants have engaged in a fraudulent concealment of the facts relative to the conspiracy."

In paragraph 38 of the amended complaint, plaintiff alleges (62a):

> "By reason of the destruction of public records, and the costly, dilatory and frivolous litigation of matters under the New Jersey Right-to-Know Act, the individual defendants have conspired to fraudulently conceal from plaintiff all of the foregoing facts."

F. R. Civ. P. 9(b) provides that "[i]n all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity." In *Suckow Borax Mines Consol. v. Borax Consolidated*, 185 F.2d 196, 209 (9th Cir. 1950), the court stated that a "bare allegation of 'fraudulent concealment' is but a conclusion of law which falls far short of the particularity of statement required by Rule 9(b)." Thus the federal courts have made clear that a plaintiff relying on fraudulent concealment to overcome the bar of the statute of limitations must specify

> ". . . how, when and what manner [the fraudulent concealment] was perpetrated. And especially must

> there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether, by the exercise of ordinary diligence, the discovery might not have been before made."

Stearns, Admr. v. Page, 48 U.S. (7 Howard) 818, 829 (1849). In *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248 (9th Cir. 1978), the court delineated the following standard for pleading fraudulent concealment:

> "[Plaintiff] had the burden of both pleading and ultimately proving fraudulent concealment. To carry that burden, he had to plead facts showing that [defendant] actively misled him, that he had neither actual nor constructive knowledge of the facts constituting his claim for relief despite his diligence in trying to discover the pertinent facts."

Id. at 249-50. Similarly, in *Charlotte Telecasters v. Jefferson Pilot Corp.*, 546 F.2d 570 (4th Cir. 1976), the court stated that the facts necessary to show the following elements must be distinctly pleaded:

> ". . . '(1) fraudulent concealment by the party raising the statute together with (2) the other party's failure to discover the facts which are the basis of his cause of action despite (3) the exercise of due diligence on his part.' "

Id. at 574. See also *Prather v. Neva Paperbacks, Inc.*, 446 F.2d 338, 340 (5th Cir. 1971); *Moviecolor Ltd. v. Eastman Kodak Co.*, 288 F.2d 80, 88 (2d Cir. 1961); *Fitzgerald v. Seamans*, 384 F.Supp. 688, 693 (D. D.C. 1974), *aff'd & remanded on other grounds*, 553 F.2d 520 (D.C. Cir. 1977).

Measured against the standards set forth in the above decisions, plaintiff's initial and first amended complaints are both deficient, for the pleadings reveal no allegations relating to plaintiff's "failure to discover the facts which are the basis of his cause of action." It is the overt acts of the alleged conspirators, not the conspiracy itself, which are the basis of a cause of action under the Civil Rights Acts; "the conspiracy itself is not a cause of action without overt acts . . . ." *Hoffman v. Halden*, 268 F.2d 280, 295 (9th Cir. 1959). Plaintiff alleges overt acts, but not his ignorance of them.[5] The most liberal reading of paragraph 38 of the amended complaint, *supra*, yields at best an implication that plaintiff failed to discover a conspiracy, as opposed to overt acts.[6] A less strained reading indicates that plaintiff asserts only a concealment of potential evidence, the remedy for which would have been available in the federal discovery procedures, after *timely* filing of a civil rights action.

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[5] Paragraph 36 of the amended complaint details acts which include tearing down of signs, condemnation of property, taking of property, impounding of assets, withdrawal and denial of permits, public defamation, criminal prosecution, and withholding of legal evidence (59a-62a). It is difficult to conceive how plaintiff plausibly could have alleged ignorance of these acts, since he would have felt the deprivation of his claimed rights as soon as such acts were perpetrated.

[6] We leave for another day a complaint, charging action by one state official, which contains allegations with particularity that such a defendant fraudulently concealed that he had conspired with other co-defendants.

Since we rule that the first amended complaint was also time-barred, we need not consider whether the district court was required to permit that amendment pursuant to F. R. Civ. P. 15(a) at so late a date in the proceedings. See note 2 above.

The judgment of the district court will be affirmed.

TO THE CLERK: Please file the foregoing opinion.

_____

Circuit Judge

Opinion of the Court, Third Circuit No. 78-1578.

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 78-1578

WESLEY K. BELL,

Appellant,

vs.

STATE OF NEW JERSEY c/o William F. Hyland, Attorney General of the State of N.J. State House, Trenton, New Jersey and DOROTHY ANDRES, RUSSELL H. MULLEN, JOHN C. KOHL, SIDNEY GLASER, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, DAVID J. GOLDBERG, WILLIAM BURNHAM, MARTIN ANTON, ALAN SAGNER, JOSEPH CUNNINGHAM and NEW JERSEY DEPARTMENT OF TRANSPORTATION.

(D.C. Civil No. 77-1531)

On Appeal from the United States District Court
For the — District of New Jersey

Present: GIBBONS, VAN DUSEN and ROSENN,
Circuit Judges

Opinion of the Court, Third Circuit No. 78-1578.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the — District of New Jersey and was argued by counsel on December 11, 1978.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed March 15, 1978 be, and the same is hereby affirmed. Costs taxed against appellant.

ATTEST:

THOMAS (illegible)
Clerk

January 24, 1979

Denial—U. S. Supreme Court, No. 78-1554
October 1, 1979

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

October 1, 1979

Mr. Wesley K. Bell
188 Route 72
Manahawkin, NJ 08050

Re: Wesley K. Bell v. New Jersey, et al. 78-1554

Dear Mr. Bell:

The Court today denied the petition for rehearing in the above-entitled case.

Very Truly yours,

MICHAEL RODAK, JR., Clerk

By (Illegible)

cc: Thomas F. Quinn, Esq. (Your No. 78-1578)
Clerk, U.S. Court of Appeals—3d Circuit

Jeffrey M. Hall, Esq.
Deputy Attorney General

Franklin H. Berry, Jr., Esquire
Berry, Summerill, Piscal, et al.

Oral Opinion—Judge Ackerman April 25th, 1980

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WESLEY K. BELL, etc.,

Plaintiff,

vs.

STATE OF NEW JERSEY, et al.,

Defendants.

Civil 80-531

Trenton, New Jersey
April 25, 1980

ORAL OPINION

Before The Honorable HAROLD A. ACKERMAN, USDJ

APPEARANCES:

CLINTON E. CRONIN, ESQ.,
For the Plaintiff

NICKOLAS MONTEFORTE, Deputy Attorney General
For Defendant Burnham

RICHARD HARCAR,
For All Defendants Except Burnham

[2] The COURT: Today is the return date of an order to show cause that I signed on March 17, 1980. By way of this order the plaintiff, Wesley K. Bell, doing business

as Wes Outdoor Advertising Company, seeks injunctive relief against one of the defendants, Louis J. Gambaccini, who is the New Jersey Commissioner of Transportation. According to the plaintiff's moving papers, a number of billboards that he owns along State Route 72 between the Garden State Parkway and Long Beach Island will be torn down pursuant to Mr. Gambaccini's orders unless an injunction is granted.

The principal response to Mr. Bell's application for an injunction has come in the form of a motion to dismiss the complaint filed not only on behalf of Mr. Gambaccini, but on behalf of most of the other defendants in this case.

Because a decision of the motion to dismiss in favor of Mr. Gambaccini will render Mr. Bell's present application for an injunction moot, I will consider the motion to dismiss first.

The defendants' principal arguments in support of their motion to dismiss are based upon principles of *res judicata* and collateral estoppel, although substantive arguments are made as well. The defendants principally point to the lawsuit entitled *Bell v. State of New Jersey* that was litigated in this district with the docket number [3] 77-1531. That case was dismissed with prejudice by the late Judge Barlow on March 15, 1978, following a defense motion similar to the one I am deciding today. Judge Barlow's decision was affirmed by the Third Circuit in an opinion filed on January 24, 1979, docket number 78-1578. Subsequently the United States Supreme Court denied the plaintiff's petition for a writ of certiorari, docket number 78-1554. In deciding this motion today I have thoroughly reviewed the file in this

earlier litigation as well as the papers submitted by counsel in the present case. I have also noted the fact that, in the words of plaintiff's brief on the present motion, "The plaintiff . . . has been involved in a running battle defending himself from the defendants since 1968." Plaintiff's brief at unnumbered page 4. This battle has led not only to the previous decisions by Judge Barlow and the Third Circuit, but to a great deal of litigation in the state courts including, *inter alia*, *Kingsley v. Wes Outdoor Advertising Co.*, 59 N.J. 182 (1971) and *Kingsley v. Wes Outdoor Advertising Co.*, 55 N.J. 347 (1970).

The present complaint frequently refers to previous litigation both in courts and before administrative agencies. Such references are contained in paragraphs 17, 20, 21, 29, 30, 33, 36, 37, 38, 47, 48, 51 and 63. [4] It hardly needs to be stated that this Court does not sit as an appellate panel for state court proceedings. The complaint, however, does not so much seek review of these proceedings as it alleges that they were part of a scheme of malicious prosecution. It is not surprising, however, that after 12 years of litigating with Mr. Bell, the State now argues that he is prevented from bringing his present action by the earlier litigation.

In *Montana v. United States*, 440 U.S. 147 (1979), the Supreme Court recently summarized the basic principles underlying the defendants' arguments. In that decision Mr. Justice Marshall wrote:

> "A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a 'right, question or fact distinctly put in issue and directly

determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . .' *Southern Pacific R. Co. v. United States*, 168 U.S. 1, 48-49 (1897). Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. *Cromwell v. County of Sac*, 94 U.S. 351, 352 [5] (1877); *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 326 (1955); 1B J. Moore, Federal Practice, ¶0.405[1], pp. 621-624 (2d ed. 1974) (hereinafter 1B Moore); Restatement (Second) of Judgments §47 (Tent. Draft No. 1, Mar. 28, 1973) (merger); *id.*, §48 (bar). Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n. 5 (1979); Scott, Collateral Estoppel by Judgment, 56 Harv. L. Rev. 1, 2-3 (1942); Restatement (Second) of Judgments §68 (Tent. Draft No. 4, Apr. 15, 1977) (issue preclusion). Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. *Southern Pacific R. Co., supra*, at 49; *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917). To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation [6] attending

> multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions."

Montana v. United States, 440 U.S. at 153-154 (footnote omitted).

The complaint in Wesley Bell's previously-litigated action before Judge Barlow closely resembles the complaint filed in this suit. The two complaints are not exact duplicates, however, so it is necessary to carefully assess the claims made in the present case and compare them with what was litigated to a final conclusion in the previous case. In this regard it should be noted that a dismissal with prejudice like the one entered by Judge Barlow has the same effect upon questions of *res judicata* and collateral estoppel as a complete adjudication on the merits after a plenary trial. *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955); *Gambocz v. Yelencsics*, 468 F.2d 837 (3d Cir. 1972). Litigants simply aren't entitled to multiple bites of the apple in pursuing their claims.

The most obvious difference between the two complaints is that not all of the defendants named in the present case were present before Judge Barlow. The ones who were not previously named are Brendan T. Byrne, Louis J. Gambaccini, [7] and John J. Degnan. Unless these parties are viewed as privies of the defendants in the previous case, they cannot benefit from the *res judicata* doctrine. They may, however, assert collateral estoppel, since mutuality of parties is not necessary for application of that doctrine. *Parklane Hosiery v. Shore*, 439 U.S. 322 (1979). The most important question before

me today, then, is whether the claims made by Mr. Bell's new complaint were already disposed of in a binding manner by the previous litigation.

The present complaint seeks injunctive relief and damages for violations of 42 U.S.C. §1983, as well as §1985(3), and §1986, as well as for violations arising directly from the Fifth and Fourteenth Amendments. See complaint, paragraph 15.

In the previous litigation Judge Barlow held, and I quote, "that an action will not lie under section 1986 unless a valid claim exists under 42 United States Code section 1985." Transcript of Oral Opinion at page 3, *citing Hahn v. Sargent*, 523 F.2d 461 (1st Cir. 1975) *cert. denied* 425 U.S. 904 (1976). Judge Barlow also held that Mr. Bell's claim that his membership in a class of political activists holding minority views could meet the "class-based invidiously discriminatory animus" requirement of §1985(3) was insufficient. See the [8] Transcript of Oral Opinion at page 3. See *Griffin v. Breckenridge*, 403 U.S. 88 (1971). Mr. Bell continues to argue that his membership in the class of political activists holding minority views meets the requirements of §1985(3). This issue having already been decided against Mr. Bell cannot be relitigated now by virtue of collateral estoppel. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979); *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313 (1971). Accordingly, all aspects of Mr. Bell's present complaint alleging violations of 42 U.S.C. §1985(3) and §1986 must be dismissed with prejudice as to all of the defendants.

It should be noted that this ruling eliminates the bulk of Mr. Bell's complaint, which principally alleges a conspiracy by eliminating his claims under the statutes that make a conspiracy actionable.

As Judge Barlow said in the earlier litigation, "Without a conspiracy count in the complaint, we now turn to the plaintiff's section 1983 claims." Transcript of Oral Opinion at page 4. I will initially note that Judge Barlow held that the six-year statute of limitations is applicable to Mr. Bell's claims of unconstitutional harassment and interference with his business. See page 5 of his Oral Opinion.

[9] The same types of claims are made herein and the same statute will apply. Accordingly, I will only consider specific acts alleged to have occurred subsequent to February 26, 1974, the date six years before filing of this complaint. Violation of §1983 depends, of course, on each defendant's individual actions. As Judge Barlow held in the earlier litigation, "The doctrine of respondeat superior does not obtain." See the Transcript at page 4, citing *Hampton v. Holmesburg Prison Officials*, 546 F.2d 1077, 1082 (3d Cir. 1976).

In all of these matters Mr. Bell is estopped from contending otherwise unless assertion of estoppel would be unfair. *Parklane Hosiery v. Shore*, cited *supra* at page 331. I do not believe such application is unfair in the present case since these issues were litigated up to the Third Circuit just a little more than a year ago and the plaintiff has cited no authority to indicate that the law has changed in his brief. It also appears that forcing relitigation would be unfair to many of the defendants who participated in the earlier litigation.

Oral Opinion—Judge Ackerman April 25th, 1980.

The defendants Davidowsky and Burnham are not alleged to have committed any specific acts against the plaintiff. Accordingly, as to them the action must be dismissed.

The defendants, State of New Jersey and New Jersey [10] Department of Transportation, do have specific acts alleged against them. They benefit, however, from our Eleventh Amendment immunity that prevents the entry of a monetary judgment against them. *Quern v. Jordan*, 440 U.S. 332 (1979). Accordingly, insofar as the complaint seeks money damages from these parties it must be dismissed. Their possible liability to prospective injunctive relief will be discussed in a little while. It should be noted, however, that the issue of the State's immunity was decided by Judge Barlow against Mr. Bell in the previous litigation, so that principles of estoppel also require the dismissal of damage claims against the State.

Although Governor Byrne is mentioned in several paragraphs of the complaint, no overt acts are alleged that could constitute a §1983 claim, even when the allegations are construed most favorably to the plaintiff, as required in Fed. R. Civ. P. 12(b) rulings. *Miree v. DeKalb County*, 433 U.S. 25, 27 fn. 2 (1977). In paragraph 24 it is alleged that unnamed people in Governor Byrne's office did certain things. Governor Byrne is not alleged to have participated in these acts, however. Similarly, in paragraphs 50 and 53 he is alleged to be responsible for the acts of his employees. As I noted earlier, principles of *respondeat superior* are inapplicable to this type of action. The final mention of the [11] Governor is a named participant in the

conspiracy, paragraph 55. I have already dismissed these claims for reasons stated. The claims against Brendan Byrne must, therefore, be dismissed.

What I have just held concerning the insufficiency of the allegations in paragraph 50 is also applicable to the defendants John J. Degnan, Louis J. Gambaccini, Alan Sagner, Dorothy Andres, and Russell H. Mullen, who are also named in that paragraph. My holding with regard to paragraph 53 is applicable to the defendants Degnan, Gambaccini, Andres and Mullen who are named therein. My holding regarding paragraph 55 applies to Degnan, Gambaccini, Sagner, Andres, Mullen, and Joseph Cunningham as well.

I will not discuss the sufficiency of the specific allegations remaining against Commissioner Gambaccini. Paragraph 22 accuses him of causing a bill to be introduced in the State Senate. It is not alleged that this bill even passed. I cannot imagine how introduction of a bill damages anyone's constitutional rights. Moreover, such acts are protected by legislative immunity. *Lake County Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S., page 391. This allegation, therefore, is insufficient. The Commissioner is next mentioned in paragraph 26 where he is accused of denying plaintiff's [12] written request to halt the discrimination against the plaintiff on the basis of inaccurate advice that he allegedly received from unnamed other parties. This is said to have occurred between October 1979 and January 1980. Although it is alleged that he willfully refused to stop the acts, i.e., that he made a decision, it is alleged that he was simply negligent in relying on misinformation in reaching his decision, rather than actively seeking to harm plaintiff. His actions, therefore,

fall within the good-faith immunity recognized by the Supreme Court in *Wood v. Strickland*, 420 U.S. 308 (1975), and other decisions. This allegation, therefore, also fails to state a claim under §1983.

Although the plaintiff argues that Gambaccini is mentioned in paragraph 27 of the complaint at unnumbered page 9 of his brief, he is not mentioned there. Gambaccini next appears in paragraph 40 where it is again alleged that his employees gave him misinformation. While this may be a wrongful act on the part of his employees, all Gambaccini allegedly did was listen. This allegation, therefore, is insufficient.

In paragraph 47 it is alleged that Gambaccini is responsible for the acts of certain subordinates in rejecting the plaintiff's applications for permits and negligently failing to prevent those acts. As I [13] mentioned earlier, *respondeat superior* is inapplicable to this action and good-faith immunity is applicable.

The remaining allegations in this paragraph seem to refer to completed state court litigation and obviously don't make out a cause of action. Nothing in this paragraph states a claim against Gambaccini. This holding, incidentally, is equally applicable to the defendants Department of Transportation, Sagner, and New Jersey. Dorothy Andres is also mentioned in this paragraph as telling Mr. Bell that a license would be granted to him. Although it is alleged that this license was never in fact granted, it is not alleged that Andres was responsible for its non-issuance. Certainly her statement that Bell would get a license did not infringe upon his constitutional rights. She, too, then is not liable for anything alleged in paragraph 47.

Oral Opinion—Judge Ackerman April 25th, 1980.

Before proceeding to the next defendant, I would like to note that I have just held that all of the allegations in the complaint against Gambaccini failed to state a cause of action. The case against him must be dismissed. Since he is the only party that Mr. Bell seeks injunctive relief against in the order to show cause, it is clear that the relief sought through the medium of that order must be denied.

One other defendant, John J. Degnan, was not named [14] in the previous complaint. In paragraph 20 it is alleged that he sent a letter to the plaintiff in February 1980 on behalf of the Department of Transportation. This letter states an intent to destroy certain of the plaintiff's billboards at the plaintiff's expense. According to this paragraph, these billboards are the subject of a pending administrative proceeding. While I do not consider it to be my appropriate role to either preserve the *res* of state administrative proceedings or serve as an appellate panel reviewing such proceedings, it is possible that the actions complained of make out a violation of §1983. Although exhaustion is not required in §1983 actions, *see Monroe v. Pape,* 365 U.S. 167 (1961), the role of a federal court in a circumstance such as the one alleged in paragraph 27 is unclear. *See, e.g., Johnson v. Kelly,* 583 F.2d 1242 (3d Cir. 1978). Neither party has briefed this problem and the allegations in this paragraph are unclear. I recognize that abstention under the doctrine of *Younger v. Harris,* 401 U.S. 37 (1971), may be appropriate. I will not at this time dismiss the plaintiff's 1983 action arising from this paragraph, but I will require him to file an amended complaint with a more specific statement of the allegations in this paragraph. When that is done, I will permit the defendants to file a new motion for dismissal if they [15] so choose.

Oral Opinion—Judge Ackerman April 25th, 1980.

The remaining reference to Attorney General Degnan is in paragraph 49. It is there alleged that he failed to abide by New Jersey's Right-to-Know Act, N.J.S.A. 47: 1A-1. This is a question of state law, not of federal constitutional law. This aspect of the complaint must be dismissed.

I will now discuss the sufficiency of the new complaint's allegations against parties involved in the previous litigation. Before getting down to specifics, I would like to note that the Third Circuit considered the sufficiency of plaintiff's allegations in an amended complaint filed on March 2, 1978. In this complaint it was alleged that the defendants' conspiracy and actions in furtherance thereof continued until the time that complaint was filed. The Third Circuit found those allegations to be insufficient to state a cause of action. See slip opinion at page 5. The present complaint alleges the same basic conspiracy, and contends that the specific acts detailed in the complaint are acts in furtherance of that conspiracy. In paragraph 55 the present complaint speaks of a second conspiracy commencing in 1974, but it states that the acts described as part of the first conspiracy are the overt acts of the second conspiracy. Obviously, both conspiracies are the same, since they [16] involve the same conspirators and overt acts. I am satisfied that paragraph 55 is simply a pleading invention to attempt to avoid the six-year statute of limitations. Since all acts alleged prior to March 2, 1978, are alleged to be part of the same conspiracy that was at issue in the previous litigation, I hold that they are the same cause of action that was previously litigated and that relitigation in this suit is barred by the doctrine of *res judicata*. This holding particularly applies to the

allegations naming specific defendants in paragraphs 23, 27, 31, 32, 33, 35, 36, 37, 38, 39, 43, 44, 45, 46, 48(h), and 51. Since these claims are barred, all claims against defendants Sagner, Pell, Mullen, Cunningham, and Stolowski must be dismissed.

Only three defendants remain to be conclusively discussed: the State of New Jersey, the Department of Transportation, and Dorothy Andres. Many of the claims made against these parties have already been dismissed and won't be discussed again.

I have also stricken any claim for monetary relief that Mr. Bell may have against the State and its Transportation Department. Only the question of injunctive relief remains as to these parties.

I will now discuss whether any of the remaining allegations made against the Department of Transportation, [17] other than those already preserved in paragraph 20, state a cause of action. The DOT is mentioned in paragraph 17 as being responsible for a continuing series of allegedly unconstitutional acts. These allegations are virtually identical to those held to be insufficiently definite by the Third Circuit in the previous litigation. I find the plaintiff collaterally estopped from asserting their sufficiency for post-1978 acts in this litigation. Paragraph 17 does not, therefore, state a claim.

In paragraph 22 it is alleged that the DOT promoted a bond referendum that was approved by the voters. I fail to see how DOT is responsible for the decision reached by the New Jersey voters, but in any event, I am convinced that these acts are protected by legislative

immunity. Moreover, these are past acts which cannot make out a cause of injunctive relief. No claim is stated in this paragraph.

Paragraph 26 likewise complains of past actions and contains nothing but the vaguest fear of future harm. Again the allegations could not support injunctive relief.

Paragraph 34 similarly complains of past actions and could not support injunctive relief.

The allegations in paragraphs 52 and 56, however, seem to refer to the same matter presented in paragraph 20 and may support injunctive relief. I will not strike [18] these paragraphs, but will permit a more particular statement of the allegations as previously ordered and discussed in regard to paragraph 20. It should be noted that the State is also named in paragraph 52, and that is the only paragraph that survives as to them.

The only matters remaining to be resolved concern Dorothy Andres. Paragraphs 28 and 41 state a §1983 claim against her. It is alleged there that she refused to process certain of plaintiff's permit applications in November and December 1979, with the intent of denying the plaintiff procedural due process. This allegation should be stated in fuller detail in the amended complaint that I have ordered the plaintiff to file.

The allegations against Andres in paragraph 42, however, are too vague to survive the defendants' motion to dismiss and will therefore be dismissed.

As a final note, let me say that I believe that my discussion of plaintiff's statutory claims resolves whatever claims he may be making directly from the

Fourteenth Amendment. The relevant statutes, particularly §1983, incorporate the plaintiff's constitutional claims.

This has been a long and detailed opinion. By way of summary, let me state that I have dismissed the complaint with prejudice as to all defendants except the [19] State of New Jersey, the Department of Transportation, John J. Degnan and Dorothy Andres. As to those four defendants, only the allegations contained in paragraphs 20, 28, 52 and 56 survive. As to the State and the Department of Transportation, only injunctive relief can be sought in light of the Eleventh Amendment. All other aspects of the complaint against these four defendants are dismissed with prejudice.

Because of the vagueness of the remaining allegations and the pruning I have performed upon the original complaint, I have ordered the plaintiff to file an amended and more definite complaint.

The defendants will be permitted to make a second motion to dismiss after this amended complaint is filed if they so choose, due to the present lack of clarity in the allegations preserved.

Since the case against Commissioner Gambaccini was dismissed with prejudice, the order to show cause is moot, and the plaintiff's application for an injunction against Gambaccini is therefore denied.

Mr. Monteforte, I will ask you to prepare an appropriate order consistent with my findings today.

Partial Dismissal, No. 80-531,
Judge Ackerman, June 2, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

v.

STATE OF NEW JERSEY, BRENDAN T. BYRNE, LOUIS J. GAMBACCINI, JOHN J. DEGNAN, DOROTHY ANDRES, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, WILLIAM BURNHAM, JOSEPH CUNNINGHAM, ALAN SAGNER, and NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey,
Defendants.

ORDER PARTIALLY DISMISSING COMPLAINT AND REQUIRING MORE SPECIFIC STATEMENTS

This matter being opened to the Court on the motion of John J. Degnan, Attorney General of New Jersey, Richard J. Harcar, Esq., and Nickolas F. Monteforte, Esq., Deputy Attorneys General, appearing on behalf of

all defendants except William Burnham and Clinton E. Cronin, Esq., appearing on behalf of the plaintiff, and the Court having considered the affidavits and briefs on file and having heard the argument of counsel, and there being good and sufficient reason, therefore,

IT IS on this 2nd day of June 1980, ORDERED:

1. All aspects of the plaintiff's complaint which allege violations of 42 U.S.C. §1985(3) and 1986 are dismissed with prejudice as to all defendants.

2. All aspects of the plaintiff's complaint alleging violations of 42 U.S.C. 1983 are dismissed with prejudice as to defendants Davidowski, Burnham, Byrne, and Gambaccini, Pell, Mullen, Cunningham, and Stolowski.

3. All aspects of the plaintiff's complaint alleging violations of 42 U.S.C. 1983 are dismissed with prejudice as to defendant John J. Degnan, except for the allegations set forth in paragraph 20 of the complaint. Plaintiff is hereby ordered to file an amended complaint containing a more specific statement as to the allegations of this paragraph as they pertain to this defendant.

4. All aspects of the plaintiff's complaint alleging violations of 42 U.S.C. 1983 are dismissed with prejudice as to the defendants, State of New Jersey and New Jersey Department of Transportation insofar as they seek money damages.

5. All aspects of the plaintiff's complaint alleging violations of 42 U.S.C. §1983 are dismissed with prejudice as to the defendant State of New Jersey insofar as they seek injunctive relief, except for the

allegations set forth in paragraph 52. Plaintiff is hereby ordered to file an amended complaint containing a more specific statement as to the allegations of this paragraph as they pertain to this defendant.

6. All aspects of plaintiff's complaint alleging violations of 42 U.S.C. §1983 are dismissed with prejudice as to the defendant New Jersey Department of Transportation insofar as they seek injunctive relief, except for the allegations contained in paragraphs 52 and 56. Plaintiff is hereby ordered to file an amended complaint containing a more specific statement as to the allegations contained in paragraphs 52 and 56 as they pertain to this defendant.

7. All allegations of the plaintiff's complaint alleging violations of 42 U.S.C. §1983 are dismissed with prejudice as to the defendant Dorothy Andres, except for the allegations contained in paragraphs 28 and 41. Plaintiff is hereby ordered to file an amended complaint containing a more specific statement as to the allegations contained in these paragraphs as they pertain to this defendant.

8. The amendments to the plaintiff's complaint required by this order are to be filed with this court on or before June 12, 1980. If said amended complaint is not filed by this date, any portion of plaintiff's action remaining as of the entry of this order will be automatically dismissed with prejudice.

s/ _____

Harold Ackerman, U.S.D.C.

Oral Opinion—Judge Thompson July 12th, 1982

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WESLEY K. BELL, etc.,

Plaintiff,

vs.

STATE OF NEW JERSEY, et al,

Defendants.

Civil Action No. 80-531

OPINION

Trenton, New Jersey
July 12, 1982

Before: THE HONORABLE ANNE E. THOMPSON, U.S.D.J.

APPEARANCES:

Messrs. Sterns, Herbert & Weinroth, by: Richard Hluchan, Esq., for the Plaintiff.

Irwin I. Kimmelman, Attorney General, by: Nickolas F. Monteforte, Deputy Attorney General, Richard J. Harcar, Deputy Attorney General, for the Defendant.

Following transcript is certified to be an accurate record as taken stenographically in the above entitled proceedings, pursuant to Section 753 Title 28 United States Code, the

VINCENT RUSSONIELLO
Vincent Russoniello
Court Reporter

Oral Opinion—Judge Thompson July 12, 1982.

[2] THE COURT: This civil rights action comes before the Court upon motion by the remaining four defendants to dismiss the complaint for failure to state a claim upon which relief may be granted and for an order directing the plaintiff to take certain actions, as well as for imposition of fines. Because the Court will consider documents outside of the pleadings, the motion to dismiss will be treated as one for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

This case, arose out of the condemnation by the State of New Jersey of a number of plaintiff's properties. Over the past dozen years, this case in various forms has been the subject of a number of opinions by the New Jersey state courts and the federal courts. Only those aspects of these opinions which are necessary for my decision today will be discussed.

Briefly, plaintiff has alleged that a variety of defendants have violated his First and Fourteenth Amendment rights in connection with the State's actions in acquiring various parcels of land adjacent to Route 72 in Ocean County upon which plaintiff has maintained a number of advertising billboards. Bell asserts that defendants have improperly taken his land, denied him various permits to maintain or erect bill-[3]boards on the parcels in question, and have interfered in his business in a capricious manner as part of a malicious conspiracy against him.

In his April 25, 1980 opinion, Judge Ackerman dismissed all aspects of the complaint against all but four defendants, the State of New Jersey, the Department of Transportation, Attorney General John

Degnan and Dorothy L. Andres, Supervisor, Outdoor Advertising, Permits and Highway Markings of the New Jersey Department of Transportation.

Pursuant to Judge Ackerman's order, plaintiff filed an amended complaint on June 10, 1980. The amended complaint once again alleges a broad conspiracy by defendants to deny plaintiff his constitutional rights. Bell also contends that defendants denied him procedural due process by refusing to process his application for permits, threatening to remove certain of his billboards from properties the State claims it owns, and by refusing to continue an administrative hearing concerning his permit applications. It also appears that plaintiff is once again challenging the validity of the condemnation proceedings by stating that it is not clear that the State owns the land in question.

The prior judicial decisions and the [4] undisputed affidavits have established certain things Judge Ackerman has held that all acts complained of prior to 1978 must be dismissed because of *res judicata*. Plaintiff argues that the amended complaint pertains only to actions taken by the defendants after that point. The first problem that arises is that plaintiff has not specified precisely which parcels of land are in question and which billboards are faced with destruction. Plaintiff is now asserting that the complaint should not be dismissed because it is not clear that the parcels in question are the ones condemned by the State and upheld by the courts.

As a preliminary matter, the complaint can be dismissed based upon the insufficiency of the pleadings. In affirming the dismissal by the late Judge Barlow of

plaintiff's first complaint concerning this matter filed in the United States District Court, the United States Court of Appeals for the Third Circuit stated that, "[t]his court has consistently held that conclusory allegations without supporting facts are not sufficient to make out a complaint under the Civil Rights Acts (particularly 42 U.S.C. §§1983, 1985 & 1986)." *Bell v. State of New Jersey*, No. 78-1578 (3d Cir. 1979) (*per curiam*).

I note, however, that the affidavits submitted [5] by defendants indicate that defendants are aware of precisely which permit applications and which parcels of land are in question. The undisputed affidavit of defendant Andres indicates that an informal hearing was conducted by the Department of Transportation on June 4, 1975 concerning permit applications submitted by plaintiff. The premise location of the signs was not readily verifiable at that time. Plaintiff failed to respond to the Department's requests for such information. On August 7, 1975, Andres wrote to Bell indicating that the Department's own investigation revealed that the sign sites were located on property owned by the State. She advised plaintiff that one permit was revoked and the Department's prior denials of other applications were reaffirmed.

The undisputed affidavit of Nickolas F. Monteforte, Deputy Attorney General, states that on November 8, 1977, the Department of Transportation served upon plaintiff eight notices of eight separate sign encroachments on State rights-of-way. These alleged sign encroachments were located on map parcel numbers L-11B, L-22, 23 and 23B, L-4B, L-17G, L-17D, L-22B, L-22C, L2R31D. Paragraph 52 of plaintiff's original complaint in this action indicates that the permit

applications in question, as well as the State's [6] notices to plaintiff that billboards will be removed concern these map parcel numbers.

Plaintiff requested and was granted by the Department a hearing concerning the notices of encroachments. Although the Department felt that plaintiff was not entitled to a hearing because the allegedly encroaching signs were not the subject of a valid permit, it agreed to the hearing in December 1977. At the same time, plaintiff instituted Civil Action No. 77-1531 in the United States District Court. *Bell v. Kohl*, No. C-2643-73, Superior Court of New Jersey, Chancery Division, Ocean County, was also proceeding at that time. In *Bell v. Kohl*, plaintiff was attacking, among other things, the constitutionality of the State condemnation proceedings against properties in which he maintained an interest. A hearing was scheduled for January 31, 1978. Plaintiff's attorney at that time advised counsel for the State that he intended to file a motion to restrain the hearing and did in fact file such a motion before Judge Barlow.

A transcript of the January 31, 1978 hearing reveals that plaintiff took the position that the Commissioner of Transportation could not proceed with the hearing because the subject of the hearing was before both the United States District Court in Civil [7] Action No. 77-1531 and the Appellate Division of the Superior Court of New Jersey, Docket No. A-3891-76. The hearing was adjourned without date. It was understood between Mr. Monteforte, representing the Department, and plaintiff's counsel that plaintiff's counsel would contact Mr. Monteforte concerning a date for continuing the hearing. No efforts were subsequently made by counsel at that time to continue the hearing.

Oral Opinion—Judge Thompson July 12, 1982.

The State has submitted documents to this Court showing the complaint, declaration of taking or *lis pendens*, where applicable, order for possession, report of Commissioners, and, if appealed, a copy of the judgment on appeal for all of the parcels mentioned earlier, with the exception of parcel E31B/L2R31D. The state claims ownership to this parcel also and has unsuccessfully sought documentation from Mr. Bell as to his claims of ownership of this parcel. The State has provided the Court with a copy of the deed to this parcel.

In *Wes Outdoor Advertising Co. v. Goldberg*, 55 N.J. 347 (1970), the Supreme Court of New Jersey upheld the constitutionality of the State's exercise of its power of eminent domain for highway beautification purposes. The opinion referred to the subject matter [8] of the suit as "various parcels of real estate situated in the Township of Stafford, Ocean County," adjacent to Route 72. *Id.* at 348.

In *Bell v. Kohl*, No. A-3891-76 (Superior Court of N.J., App. Div. March 8, 1978), the Appellate Division affirmed the order of the Chancery Division dismissing Bell's demand to reopen the condemnation proceedings. Similarly, in the federal action before Judge Barlow, the Court dismissed the action challenging the State's condemnation of 38 of plaintiff's properties. Thus, there is no question of fact at this time concerning the State's ownership of the parcels in question.

N.J.S.A. 27:7A-13 stipulates that no roadside signs may be erected or maintained within the right-of-way of an interstate highway within the state, with certain exceptions not pertinent to this case. The administrative regulations explicitly prohibit the erection or

maintenance of outdoor advertising signs on the highways. *See* N.J.A.C. 16:41-8.3. Thus, by law, defendants could not have granted the permits for which the plaintiff had applied and were compelled to seek removal of those signs situated on the state right-of-way.

The State has provided certain procedures by which an aggrieved party is to be notified of any violations and is given an opportunity to contest the [9] State's action. N.J.A.C. 16:41-8.12 and -8.14 provide for notice of revocation of a permit and for notice of a violation, respectively. There is no question but that the notice provisions were satisfied. Section 8.12 permits an aggrieved party to request a hearing concerning the alleged violation, which plaintiff did. Section 8.13 requires the State to permit the aggrieved party a full evidentiary hearing and the opportunity to present all evidence in support of the issues. The administrator is then required to reach a determination on the facts and record disclosed.

In theory, a failure by the State to accord an aggrieved party an administrative hearing *could* state a claim for violation of one's constitutional rights to due process. The State has, however, afforded plaintiff a full opportunity to be heard. The undisputed record before this Court indicates that the exact issues to be addressed at the administrative hearing were addressed conclusively by both state and federal courts. In addition, the record indicates that the opportunity to be heard was in fact accorded plaintiff. A hearing was provided, which plaintiff sought to stop. Since the undisputed record indicates that the issues pending before the administrative officer were decided by the courts, there is nothing the [10] administrative procedure

could have accomplished. Moreover, plaintiff was afforded ample opportunity to prove his claim to parcel L2R31D. Plaintiff declined to produce the required documentation and failed to pursue his administrative remedy. Thus, from the record presently before the Court, the State has accorded plaintiff all the process he was due.

Accordingly, it appears that summary judgment is appropriate. The Court recognizes, however, that this motion originally was to dismiss for failure to state a claim. Rule 12(b) requires that when the Court considers matters outside of the pleadings as it has done so today, the parties must be given a "reasonable opportunity" to present all material pertinent to a summary judgment motion. The affidavits considered by the Court were filed on July 7, 1982. As the record now stands, there is no question but that the State owns the lands in question; that both state and federal courts have upheld the State's condemnation of the property; that the parcels fall within the State's prohibition on signs; and that the applications for permits and notices of violations concern only these properties. Thus, no constitutional rights of the plaintiff have been violated by defendants' actions. Plaintiff will be accorded 20 days during which time he [11] may provide the Court with the necessary documentation to establish that there remains a question of fact for this Court to decide. To provide plaintiff with some guidance, such documentation must at a minimum show that the permits for which he has applied and the notices of violation he has received do not concern property which was involved in any prior state or federal proceeding. The documents need not address any "conspiracy" theory alleged in the complaint. This

theory has been rejected by both Judge Barlow and Judge Ackerman and plaintiff's attempt to resurrect this theory by stating that there is a new conspiracy will similarly be rejected by this Court.

Defendants have asked this Court to order the removal of the signs and to impose fines and penalties upon the plaintiff. N.J.S.A. 54:40-67 provides for recovery of penalties for violations of the Outdoor Advertising Act, N.J.S.A. 54:40-50 *et seq.* The statute by its own terms limits jurisdiction to enforce the provisions of the Act to the county district courts and municipal courts. Any proceeding for a violation of the Act can be brought in the county or municipality in which the violation occurs or where the violator resides, has a place of business or principal office. N.J.S.A. 54:40-67. Injunctive relief is limited to the [12] Superior Court. N.J.S.A. 54:40-68.

Perhaps more importantly, the defendants have never counterclaimed for such penalties. Apparently, the State is under the mistaken belief that it is precluded from enforcing state laws merely because the plaintiff filed a suit in federal district court. If the Court were to issue the order defendants seek, it would be the equivalent of this Court issuing a *writ of mandamus* to state officials to undertake actions in their capacities as state officials which the State Legislature has given them discretion to undertake. This the Court cannot do. If the appropriate state officials wish to impose fines and/or remove signs, it is for them to do so in their own discretion, and in the appropriate forum. This issue is not appropriately before this Court.

Oral Opinion—Judge Thompson July 12, 1982.

In summary, I will issue an order dismissing the case unless within 20 days plaintiff supplies appropriate documentation to the Court indicating that there is a material question of fact to be resolved. I will deny defendants' motion for an order "enforcing the laws of the State of New Jersey, directing removal of the outdoor advertising structures which are the subject of this action, barring the future construction or reconstruction of any such structure in violation [13] of said laws and the imposition of fines and penalties against the plaintiff." The Court will issue an appropriate form of order.

Order, Lack of Jurisdiction No. 80-2109
July 29, 1981

ORDER

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 80-2109

WESLEY K. BELL,

Appellant,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN, DOROTHY ANDRES, and NEW JERSEY DEPARTMENT OF TRANSPORTATION.

(C.A. No. 80-00531)

Submitted Under Third Circuit Rule 12(6)

July 21, 1981

Before: ADAMS, HUNTER and SLOVITER,
Circuit Judges

The appeal is dismissed for lack of jurisdiction. *See United States v. McKnight*, 593 F.2d 230 (3d Cir. 1979).

(Illegible) M. ADAMS
Circuit Judge

Dated: July 29, 1981

Order No. 80-531, Judge Thompson
December 21, 1982

ORDER

UNITED STATES DISTRICT COURT
District of New Jersey

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES, and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Civil No. 80-531.

Original Filed
Dec 21 1982
Allyn Z. Lite, Clerk

This matter having been brought before the court upon motion by defendants to dismiss the complaint for failure to state a claim upon which relief may be granted, and the court having treated the motion as one for summary judgment, and having considered the entire record, it is this 17th day of December 1982,

ORDERED that the complaint against John Degnan be dismissed in its entirety; and it is further

Order No. 80-531, Judge Thompson December 21, 1982.

ORDERED that paragraph 17 of the complaint be and hereby is dismissed; and it is further

ORDERED that within 20 days from the date of this order the parties supply the court with the information requested by the court in the opinion filed even date herewith; and it is further

ORDERED that the decision on the motion for summary judgment concerning all other remaining claims be and hereby is reserved.

ANNE E. THOMPSON
U.S.D.J.

Opinion No. 80-531, Judge Thompson
December 21, 1982

OPINION

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES, and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Civil No. 80-531.

Original Filed
Dec 21 1982
Allyn Z. Lite, Clerk

THOMPSON, District Judge

Appearances:

Richard M. Hluchan, Esquire; Sterns, Herbert & Weinroth; 186 West State Street; P. O. Box 1298; Trenton, New Jersey 08607; *(Attorney for Plaintiff).*

Opinion No. 80-531, Judge Thompson December 21, 1982.

Nickolas F. Monteforte; Deputy Attorney General; Department of Law and Public Safety; Division of Law; Richard J. Hughes Justice Complex; CN 114; Trenton, N.J. 08625; (*Attorneys for Defendants*).

By order dated July 13, 1982, the court afforded plaintiff an opportunity to supplement the record to show why judgment should not be granted in favor of the remaining defendants in this matter. For the following reasons, the court concludes that it must have more information from the parties before it can make a final determination.

In his affidavit, plaintiff appears to imply that the billboards for which he seeks permits or concerning which the state has advised him it will remove are located on properties not condemned by the state. The court must reject this implication, however. Paragraph 52 of the original complaint filed in this action and paragraph 4 of the verified petition for temporary restraints clearly indicate that the challenged state action concerns map parcel numbers which were the subject of at least one previous action in this court, *Bell v. State of New Jersey*, Civ. No. 77-1531, as well as at least one previous action in the state court, *Bell v. Kohl*, No. C-2643-73, Superior Court of New Jersey, Chancery Division, Ocean County. For example, Exhibit 3 appended to the original complaint in 77-1531 challenging state actions involved in the condemnation of 38 properties lists the parcels cited in paragraph 52 of the original complaint in this case and in paragraph 4 of the verified petition for temporary restraints. Since Civil Action No. 77-1531 was dismissed with prejudice, and since other courts have dismissed challenges to the

state's condemnation actions concerning these parcels, the issue of ownership of these parcels is *res judicata*. In addition, plaintiff's former counsel had represented in open court that the same issues pending before the administrative hearing officer in the adjourned hearing were precisely those before the state and federal courts in the actions mentioned above.

Since the plaintiff is bound by his pleadings that the billboards in question are located on these properties, and since N.J.S.A. 27:7A-13 stipulates that no roadside signs may be erected or maintained within the right-of-way of an interstate highway within the state, it appears that defendants could not have granted the permits as a matter of law. *See also* N.J.A.C. 16:41-8.3 (explicitly prohibiting the erection or maintenance of outdoor advertising signs on the highways). While, as indicated earlier, it may be established that the signs in question are on state land, the court cannot be certain on the record before it that the signs fall within the prohibition of section 7A-13. While it may be a very simple matter, the parties should, nevertheless, submit documentation indicating not the location of the signs, for that has already been established by the prior record, but whether the signs fall within the right-of-way prohibition. If in fact the signs are on the right-of-way, and defendants could not have granted the permits or have allowed the billboards to remain standing, it is clear that defendants had then afforded plaintiff all the process he was due concerning both the removal of and application for billboards on these properties. Since the administrative body was bound by the prior judgments of the state and federal courts concerning ownership of these parcels, the administrative agency could not have made any other

decision. Under these circumstances, a full-fledged hearing was not necessary, since plaintiff had already been afforded an opportunity in both federal and state court to show ownership of these properties. It is clear that the defendants considered the signs as falling within the right-of-way prohibition. If plaintiff indicates that there was a dispute raised at that time about whether or not the signs are within the right-of-way and therefore expressly prohibited by statute, this court will decide only whether or not plaintiff was afforded the process necessary to satisfy constitutional standards; the court will not sit as an appellate court for state agency determinations. If such a dispute existed, the parties should, by brief, address the merits of the due process argument.

If, on the other hand, the agency had some discretion in the matter, as, for example, if the exception of section 7A-16 applied, then the parties should address whether or not plaintiff was afforded the process due him. If plaintiff may have been entitled to a permit in the discretion of the state agency, then he certainly would have to have been accorded a hearing of some kind prior to the destruction of his billboards. *See Logan v. Zimmerman Brush Co.*, _____ U.S. _____, 50 U.S.L.W. 4247, 4251 (Feb. 24, 1982). As will be discussed shortly, it may make a difference if plaintiff is alleging that the defendant violated an established state procedure or merely that the state procedure itself caused the asserted deprivation. *Compare Parratt v. Taylor*, 451 U.S. 527 (1981) *with Logan, supra.* The court's discussion, *infra*, of the one-day hearing in January 1978 regarding #E31B/L2R-31D applies to these parcels as well. Thus, although summary judgment concerning these parcels

may be appropriate once the court receives the additional information, the court cannot grant defendants' motion at this time.

The result may be different with regard to #E31B/:2R-31D, however. This piece of property is not among those condemned by the state. Although the state claims that it has acquired the property, plaintiff has submitted evidence indicating that he may have retained some interest in this parcel. According to the undisputed affidavit of counsel for the defendants, a hearing was provided to plaintiff by defendants regarding all of the parcels in question. The hearing was scheduled for January 31, 1978. Plaintiff's attorney at that time advised counsel for the State that he intended to file a motion to restrain the hearing and did in fact file such a motion before Judge Barlow.

A transcript of the January 31, 1978 hearing reveals that plaintiff took the position that the Commissioner of Transportation could not proceed with the hearing because the subject of the hearing was before both the United States District Court in Civ. No. 77-1531 and the Appellate Division of the Superior Court of New Jersey in No. A-3891-76. The hearing was adjourned without date at the request of plaintiff's counsel. It was understood that plaintiff's counsel would initiate any desired continuation of the hearing, but no such efforts have ever been undertaken. Concerning L2R-31D, the state asked plaintiff to submit documentation concerning ownership of this parcel.

In determining whether or not plaintiff's due process rights have been violated, the court notes as a preliminary matter that plaintiff does not appear to be

challenging the adequacy of the administrative procedures available to him. Rather, the complaint appears to allege that certain defendants have acted wilfully to deprive plaintiff of the safeguards available to him. The state appears to be contending that the hearing provided to plaintiff in 1978 pursuant to N.J.S.A. 16:41-8.12 does not actually apply to this situation because that section concerns revocation of permits or licenses and not application for a permit or destruction of billboards for which no permit was ever issued. Even if the state were correct that this particular section was not applicable, due process requires that a person affected by an administrative action be given a full opportunity to be heard before any official action is taken. The hearing must be "at a meaningful time and in a meaningful manner." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970). In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the Court emphasized three factors in determining whether the requirements of due process have been satisfied. These factors are (1) the private interests implicated; (2) the risk of an erroneous determination as a result of the process accorded and the probable value of additional procedural safeguards; and (3) the public interest and administrative burdens, including the costs of additional procedures. The Supreme Court has recently reiterated its concern that predeprivation procedures be afforded. *See Logan, supra.*

Based upon the record presently before the court, it is unclear precisely what process has been afforded plaintiff. It is noteworthy that in *Avant Industries Ltd. v. Kelly*, 127 N.J. Super. 550, 553 (App. Div. 1974), the court noted that the "total absence of any hearing makes appellate review impossible, for there is no record for us

to consider." The absence of such a procedure, the court stated, violated due process. *Id.* It also appears that the New Jersey administrative procedures indicate that a hearing may be required. The parties, particularly the defendants, should also supply the court with appropriate information and documentation concerning precisely what remedies are available to a party seeking to erect or maintain billboards as a matter of state procedure. In addition, the parties should address whether or not the requirements of the New Jersey administrative procedure act applies to this situation.[1]

The court need not determine at this time, however, precisely what procedures must be afforded plaintiff under these circumstances. The state has in fact offered in January 1978 a hearing concerning this matter. The state has accorded plaintiff an opportunity to submit documentation concerning his right to maintain or erect billboards on the parcel in question. There is no indication in the record that plaintiff has actually asked the state to proceed with the hearing. There is also no indication that the hearing has been closed. There is also nothing in the record to indicate that the state would

[1] Prior to 1978 many cases contested before state agencies were heard initially by a hearing officer or examiner who was an employee of the agency responsible for rendering a decision. As the Supreme Court of New Jersey stated in *N.J. Civil Serv. Ass'n v. State*, 88 N.J. 605 (1982), "[t]he use of agency employees to adjudicate claims against an agency encouraged an institutional bias that undermined the fairness and impartiality desired in administrative adjudication." *Id.* at 608-09 (citation omitted). To rectify this situation, the state legislature amended the Administrative Procedure Act ["APA"], N.J.S.A. 52:14B-1 *et seq.* in 1978 to create an independent administrative law office. *Id.* at 609. If the APA applies and the state decides to grant or to continue a hearing, it may wish to consider changes in the law in the intervening period.

consider the matter closed if plaintiff did not seek to have another date set for the hearing within a certain period of time. If the state does not consider the matter closed, the court cannot consider plaintiff's due process claims at this time because he has not exhausted his administrative remedies.[2] If the state does consider the hearing closed, there are serious questions raised under these circumstances of a due process violation if plaintiff had no notice that the proceedings would be terminated and that the state would consider plaintiff effectively estopped from contesting the state's action if plaintiff did not initiate reconvening the hearing by a certain

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[2] As the Supreme Court stated in *Gibson v. Berryhill*, 411 U.S. 564, 574 (1973):

> Normally when a State has instituted administrative proceedings against an individual who then seeks an injunction in federal court, the exhaustion doctrine woud require the court to delay action until the administrative phase of the state proceedings is terminated, at least where coverage or liability is contested and administrative expertise, discretion, or factfinding is involved. [footnote omitted]

See also, Republic Industries, Inc. v. Central Pennsylvania Teamsters Pension Fund, No. 82-1251, slip op. at 1 (3d Cir. Nov. 19, 1982) (citation omitted). Unlike the situation in *Berryhill*, the plaintiff in this case has not raised in his various complaints the adequacy of the administrative remedy. Although plaintiff raises for the first time in his affidavit the issue of possible bias, this mere conclusory statement without any support is insufficient to dispense with the administrative exhaustion requirement. Furthermore, it is in direct opposition to that portion of the relief sought in the amended complaint—the continuance of the hearing. The exhaustion requirement, of course, presupposes an adequate state remedy. *Republic, supra*, slip op. at 10 (citation omitted). This exhaustion requirement is for the administrative action forming the basis of plaintiff's asserted constitutional deprivation. It is not a requirement that plaintiff exhaust administrative or state remedies prior to bringing a civil rights action in federal court based upon a constitutional deprivation.

date. Without a statement by the plaintiff that he has sought reconvening of the hearing and an affidavit by the state that it would not permit any further procedures to take place, the court cannot properly consider the due process claims.[3] Accordingly, the court will require the

[3] The court also finds abstention on the basis of *Younger v. Harris*, 401 U.S. 37 (1971), inappropriate. In *Williams v. Red Bank Bd. of Education*, 662 F.2d 1008 (3d Cir. 1981), the court extended the *Younger* doctrine to pending state administrative proceedings. *Id.* at 1016. The court noted that "[a]dministrative regulation often forms a crucial aspect of a state's implementation of its laws, and to bar *Younger* abstention simply on the ground that the pending proceedings are 'administrative' could easily undermine important state policies and concerns.' *Id.* The three criteria for abstention in such proceedings are whether:

> (i) the state proceedings reflect strong and compelling state interests; (ii) the state proceedings are adequate to vindicate federal claims, and (iii) federal intervention into state administrative proceedings would be substantial and disruptive.

Deck House v. New Jersey St. Bd. of Architects, 531 F. Supp. 633, 645 (D.N.J. 1982), *citing Red Bank, supra.* In a challenge to state bar disciplinary proceedings, the Supreme Court has set forth related criteria for abstention: (1) whether the proceedings constitute ongoing state judicial proceedings; (2) whether the proceedings implicate important state interests; and (3) whether there is an adequate opportunity in the state proceedings to raise constitutional challenges. *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, _____ U.S._____, 50 U.S.L.W. 4712, 4714 (June 21, 1982).

In the instant case, the proceeding which plaintiff seeks to enjoin is merely the actual enforcement of the administrative decision to remove the billboards in question. These state administrative actions are not the type of judicial or quasi-judicial proceedings the abstention doctrine was intended to reach. Moreover, in light of plaintiff's First Amendment claim, the irreparable harm exception to *Younger* comes into play. In addition, the court cannot conclude that the state's interest in highway beautification reflects the important state interest necessary for abstention. Finally, the court cannot on this record conclude that the state proceedings are adequate to vindicate plaintiff's constitutional rights because the nature and scope of the state proceedings are unclear. To the extent that plaintiff does not seek to stop administrative action, but instead seeks to compel administrative action, *Younger* does not apply.

parties to submit the appropriate information with 20 days from the date of this opinion.

As far as other allegations contained in the complaint are concerned, that portion of paragraph 6 regarding a conspiracy is dismissed on *res judicata* grounds. All aspects of the complaint against John Degnan will be dismissed because there is no indication that he acted personally in this matter. *Respondeat superior* is not a basis for section 1983 liability. There are no violations of plaintiff's constitutional rights set forth in paragraph 17 and that portion of the complaint will also be dismissed. The court will enter an order consistent with this opinion.

December 17, 1982.

Order for Abandonment of Parcel L-2R31D

SUPERIOR COURT OF NEW JERSEY
Law Division, Ocean County

RMC:lt 6448
File
(Stamp Illegible)

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STATE OF NEW JERSEY, By the
COMMISSIONER OF TRANSPORTATION,
Plaintiff,

vs.

EGON KAHL, et al.,
Defendants.

Docket No. L-34210-71
Civil Action

ORDER FOR JUDGMENT

This matter having been presented to the Court by Irwin I. Kimmelman, Attorney General of New Jersey, by Remo M. Croce, Deputy Attorney General, and it appearing that the relief sought by plaintiff in the motion heretofore filed with the Court is appropriate;

Order for Abandonment of Parcel L-2R31D.

IT IS on this 20th day of July 1983, ORDERED and ADJUDGED that the condemnation in the above captioned matter be abandoned and the Complaint be dismissed without cost to any of the parties.

s/ ARTHUR J. BLAKE
Arthur J. Blake, *J.S.C.*

Papers Considered:
[x] Notice of Motion
[x] Movant's Affidavits
[ ] Movant's Brief
[ ] Answering Affidavits
[ ] Answering Brief
(Illegible)

Order No. 80-531, Judge Thompson
September 28, 1983

ORDER

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL No. 80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN, DOROTHY ANDRES, and NEW JERSEY DEPARTMENT OF TRANSPORTATION,
Defendants.

Original Filed
Sep 28 1983
Allyn Z. Lite. Clerk

This matter having been brought before the court upon motion by plaintiff for partial summary judgment and upon motion by defendants for summary judgment, and the court, having considered the briefs submitted, the arguments of counsel and the entire record and for good cause having been shown; it is this 23rd day of September 1983,

Order No. 80-531. Judge Thompson September 28. 1983.

ORDERED that for the reasons stated in the court's opinion filed even date herewith, plaintiff's motion be and hereby is denied; and it is further,

ORDERED that summary judgment is granted on behalf of defendants and the amended complaint be and hereby is dismissed with costs.

ANNE E. THOMPSON
Anne E. Thompson, *U.S.D.J.*

Opinion No. 80-531, Judge Thompson
September 28, 1983

OPINION

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL No. 80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN, DOROTHY ANDRES, and NEW JERSEY DEPARTMENT OF TRANSPORTATION,
Defendants.

Original Filed
Sep 28 1983
Allyn Z. Lite. Clerk

THOMPSON, District Judge

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Opinion No. 80-531. Judge Thompson September 28, 1983.

This opinion resolves defendants' motion for summary judgment and plaintiff's motion for partial summary judgment. The facts underlying this matter have been set forth at length in previous opinions of this and other courts and will be repeated only as necessary.

The discussion which follows in this section of the opinion concerns all parcels except #E31B/L2R-31D ["L2R]. In its December 17, 1982 opinion, the court made clear that plaintiff's claim of ownership of the parcels is barred by the doctrine of *res judicata*. The state has condemned the properties in question and plaintiff's challenges to the state's taking of these properties have already been rejected by the courts. As noted in the December 17, 1982 opinion, the pleadings in this matter eliminate any question concerning whether the notices of encroachment and the applications for permits involve these parcels.

The issue presented is whether the state's rejection of plaintiff's applications for permits for billboards on these parcels and its notices to plaintiff to remove billboards standing in these areas violated plaintiff's Fifth and Fourteenth Amendment rights to due process of law. The essential facts are not in dispute. In its December 17, 1982 opinion, the court asked for supplemental briefing concerning whether the Department of Transportation had the discretion to permit plaintiff to erect or maintain billboards on these parcesl. Having concluded that the defendants could not have granted the permits as a matter of law, the court holds that the actions of defendants concerning these parcels have not denied plaintiff his right to due process of law. Accordingly, summary judgment is granted concerning these parcels.

Opinion No. 80-531, Judge Thompson September 28, 1983.

Although plaintiff contends that his right to erect or maintain billboards in the areas in question presents an issue of fact, N.J.S.A. 27:7A-13 stipulates that no roadside signs may be erected or maintained within the right-of-way of an interstate highway within the state. *See also* N.J.A.C. 16:41-8.3 (explicitly prohibiting the erection or maintenance of outdoor advertising signs on the highways). N.J.S.A. 27:7A-22 authorizes the Commissioner of Transportation to prosecute any violations of J.J.S.A. 27:7A-13.

N.J.S.A. 27:7-22.4 permits the Commissioner of the Department of Transportation to acquire by gift, purchase or condemnation real property adjacent to Federal-aid highways for landscape purposes. *See Wes Outdoor Advertising Co. v. Goldberg*, 55 N.J. 347 (1970). Under the authority of this statute, the state acquired the parcels in question. Actions of the state in acquiring these parcels have been upheld in prior court decisions. *See opinion of December 17, 1982*, at 2-3. N.J.S.A. 27:7-22.4 provides that any property acquired under that section "shall be considered to be integral parts of the Interstate Highway System and the State highway system and the cost of said acquisition shall be considered as a part of the cost of the right-of-way of such highways." The term "right-of-way" has been interpreted by the Department of Transportation to mean the total width of property owned by the state. *Southern New Jersey Newspapers, Inc. v. St. of New Jersey Dep't of Transportation*, 542 F. Supp. 173, 176 (D.N.J. 1982)(citation omitted).

Since prior proceedings and pleadings establish that the billboards in question are located on these parcels and that the state's condemnation of these proceedings

is valid, there can be no question but that the billboards and the applications to erect billboards fall within the right-of-way. Therefore, under N.J.S.A. 27:7A-13, defendants could not have permitted plaintiff to maintain or erect billboards on these parcels.

The process due plaintiff under these circumstances has been satisfied by defendants. Due process is a flexible concept and calls for such procedural protections as the particular situation demands. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The court must consider the private interests at stake in a governmental decision, the governmental interests involved, and the value of various procedural requirements in determining the extent of the process due plaintiff. *Hewitt v. Helms*, 51 U.S.L.W. 4124, 4127 (Feb. 22, 1983), *citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The state administrative body was bound by the prior judgments of the state and federal courts concerning ownership of these parcels, and could not have made any decision other than that no permits could issue for billboards located on these parcels. Under these circumstances, a full-fledged hearing would not have materially assisted the Department of Transportation's decision, as there would have been nothing left for the hearing to decide. *See Penner v. Schweiker*, 701 F.2d 256, 260 (3d Cir. 1983) (in social security context, "new" claims could be denied by the Secretary of Health and Human Services without a hearing because they were barred by *res judicata*). Plaintiff had already been afforded an opportunity in both state and federal court to demonstrate ownership of or an interest in these parcels. Plaintiff has not shown that at the pertinent

time he raised any question concerning whether the signs fell within the right-of-way prohibition. In any case, the pleadings in this matter establish that they do fall within that prohibition. Thus, there was no denial of due process and summary judgment is granted concerning these parcels.

The remaining parcel, L2R, presents a more difficult issue, in part because of the failure on the part of the state to supply the court with information concerning the state procedures available to an aggrieved party at the time in question. The state's posture in this regard appears to result from its steadfast adherence to the view that if it was not by statute or regulation required to afford a party who is subject to adverse administative action a hearing, the requirements of due process cannot compel it to offer an aggireved party some form of hearing.[1]

The analysis starts with the fundamental precept that "procedural due process is necessitated only if there has been a taking or deprivation of a protected interest." *Chrysler Corp. v. Fedders Corp.*, 670 F.2d 1316, 1321 (3d Cir. 1982), *citing Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972). The "taking" need not be total. Any significant taking of property falls within the purview of the Due Process Clause. *Fuentes v. Shevin*, 407 U.S. 67, 86 (1975). The threatened destruction of billboards as well as plaintiff's apparent entitlement to erect billboards on the property if he is the owner or has the permission of the owner to do so, meets the requirements of a taking within the meaning of the Due Process Clause. The Fourteenth Amendment's protection of property safeguards not only rights of undisputed ownership but extends also to "any significant property interest."

Opinion No. 80-531, Judge Thompson September 28, 1983.

Boddie v. Connecticut, 401 U.S. 371, 379 (1971). *See also Carey v. Piphus*, 435 U.S. 247, 266 (1978).

From affidavits recently filed with the court by plaintiff, it is apparent that plaintiff has a claim to an interest in the parcel. In *McCulloch v. Glascow*, 620 F.2d 47 (5th Cir. 1980), the defendant town claimed to have acquired by prescription an easement for a public street along a strip of land of disputed ownership. Plaintiffs were without a record title to the strip, but claimed title in fee simple through adverse possession unencumbered by the town's alleged prescriptive easement. *Id.* at 49. Despite having knowledge of plaintiff's claim of title and without taking action to determine or settle the competing claims between it and plaintiffs, the town knocked down plaintiffs' fences, bulldozed the strip and built a street on it. *Id.*

The Fifth Circuit held that plaintiffs possessed a sufficient property interest in the land to entitle them to a due process hearing. *Id.* at 50. Regardless of the ultimate success of plaintiffs' claim of title to the property, the conflict engendered by the competing claims was sufficient to require a due process hearing. *Id.*

The *McCulloch* case is instructive. If in the instant case the state was aware of plaintiff's property interest in the parcel, it could not have moved to destroy the billboards without affording plaintiff procedural due process. Similarly, if plaintiff had indicated to the state that he had an interest in the parcel, and, consequently, was entitled to a permit for a billboard, the state could not deny the application for permits without affording plaintiff an appropriate hearing. As will be discussed,

infra, defendants are incorrect in maintaining that merely because there was no provision in the pertinent statute or regulations requiring them to conduct a hearing concerning an application for a permit to erect or maintain billboards, they were not required to hold such a hearing. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); *Holman v. Hilton*, No. 82-5563 (3d Cir. July 6, 1983). The court must determine whether, under the circumstances, the procedures actually afforded plaintiff comported with the requirements of due process.

The state has not supplied the court with an affidavit or other documentation describing the procedures available in 1979 to a party who seeks a permit to erect a billboard. Although it is obvious from the documents submitted in this matter that an aborted hearing of some kind took place in January 1978, the contours of that hearing have not been delineated. Thus, for example, the court does not know precisely what the "hearing" afforded plaintiff in 1978 was supposed to decide. Certainly, the agency was without power to determine title.[2] Moreover, the court does not know whether plaintiff was afforded an opportunity to cross-examine witnesses or present evidence in his behalf. The court also does not know whether a record would be made of any hearing or whether there were any avenues of administrative appeal or judicial review available.

The affidavits submitted to the court do, however, establish certain undisputed facts for purposes of these motions. Neither side disputes plaintiff's need to secure a permit either to erect or to maintain billboards on the parcel since it falls within 660 feet of the right-of-way.[3] As noted in the court's oral opinion of July 12, 1982, the undisputed affidavit of Nickolas F. Monteforte, Deputy

Attorney General, states that on November 8, 1977, the Department of Transportation served upon plaintiff eight notices of eight separate sign encroachments on what allegedly were state rights-of-way. The alleged sign encroachments were located on a number of parcels, including L2R. Plaintiff requested and was granted a "hearing" concerning the notices of encroachments. At the same time, plaintiff instituted suits in both the state and federal courts challenging the state's condemnation of his properties. Plaintiff's attorney moved in federal court to restrain the hearing before the Department of Transportation set for January 31, 1978.

Obviously unaware that not every parcel involved in the application for permits had been condemned by the state, plaintiff's attorney at that time stated at the hearing that the hearing should not proceed because the subject matter of that hearing was the same as that presented to the federal and state courts. The hearing, nevertheless, started on January 31, 1978. According to the undisputed Monteforte affidavit, the hearing was adjourned when plaintiff's counsel had to catch a train. Monteforte and plaintiff's counsel "understood" that plaintiff's counsel would contact plaintiff concerning continuation of the hearing. Counsel subsequently made no efforts to continue the hearing.

The transcript of the aborted hearing indicates that the Department of Transportation had witnesses testify concerning the state's alleged interest in the property. It is apparent that the state was aware of the possibility that plaintiff had an easement to use billboards on this parcel. With the exception of this parcel, the issues presented in the January 31, 1978 hearing[4] were also those presented to and decided by the state and federal courts.[5]

Opinion No. 80-531, Judge Thompson September 28, 1983.

According to the Monteforte certification of July 7, 1982, Department of Transportation records at the time of the 1978 hearing indicated that the state received a deed dated December 5, 1974 from Egan Kahl and others to the state. That was recorded on January 8, 1975. Records also indicated a recording of a contract for sale of the same parcel from the prior owner, Gustav Foster, to Wesley K. Bell. The contract was dated December 26, 1968 and was recorded on December 30, 1968. Foster conveyed to Kahl and others by deed dated November 24, 1971, which transaction was recorded on February 8, 1972. It was the Department of Transportation's understanding in 1978 that Bell had breached the 1968 contract rendering that contract invalid. Monteforte explains that, although the state claimed title to the parcel, it decided to allow Bell to produce any documentation showing that he was entitled to a permit to erect or maintain billboards on the parcel. At least by the time the 1978 hearing was adjourned, plaintiff had not produced any evidence indicating that he had an interest in this parcel.

The dismissal by the United States District Court of the complaint in 77-1531 and the affirmance of that dismissal by the United States Court of Appeals for the Third Circuit covered the actions complained of as of the date of the amended complaint, March 2, 1978. The dismissal of the complaint by the district court did not take place until March 11, 1980.

In applications postmarked October 15, 1979 plaintiff applied for permits on this parcel, as well as on the other parcels involved in this action. Defendant Andres received the applications. In her affidavit filed July 7,

1982. Andres states that she noted that the applications concerned parcels which had been the subject of court proceedings, the result of which had established ownership by the state of all parcels involved with the exception of L2R. Andres noted that she was aware of the state's deed to this parcel as well. Because it was her understanding that plaintiff "was claiming some form of title" to this parcel, Andres requested legal advice from the office of the Attorney General. Pursuant to that advice Andres wrote a letter to Bell on November 13, 1979 advising Bell that the applications were improper. With respect to parcel L2R, however, Andres requested that Bell produce some documentation of his claim that the Department of Transportation did not own this parcel so that a further review of the permit application could be considered. Andres further informed Bell that failure to produce any documentation would be taken as an admission of Department of Tranportation ownership of L2R. In her undisputed affidavit, Andres states that, as of the date of the affidavit, Bell had never produced any documentation of his claim to title of L2R. The check submitted with the application was returned to Bell with the marking "VOID" across the check, in accordance with departmental procedures.

On December 13, 1979, plaintiff's attorney returned the applications and the check marked "VOID." Andres made several attempts to meet with plaintiff's attorney during December 1979 and the parties finally met on January 2, 1980 to discuss the applications. Monteforte's letter to plaintiff's counsel dated February 5, 1980 noted the agreement reached during the January 2, 1980 meeting. Minutes of the meeting taken by Andres and submitted by defendants as Exhibit J corroborate

Monteforte's certification of the agreement among the parties. Monteforte's letter indicated that the applications were once again being returned to plaintiff because they were improper. Monteforte's letter referred to the November 13, 1979 Andres letter to plaintiff warning him that if he did not remove his signs from the parcels in question the state would remove them. One of the signs allegedly encroaching on state property was located on parcel L2R. The reason given for the notices of encroachment and the return of the applications was that the matter of ownership of the parcels had already been fully litigated. Referring to the agreement reached by the parties on January 2, 1980, Monteforte noted that all parties agreed that parcels L11B, L17G, L22C and L22B were owned by the Department of Transportation and that all signs would be removed by January 31, 1980. Bell was permitted until February 29, 1980 to produce documentation that the condemnation proceedings on parcel L4B did not implead the proper parties. Until that time, the parties agreed that all advertising copy would be removed by January 31, 1980. The state expressly stipulated in the agreement that the accord concerning L4B did not in any way prejudice the state's right to claim ownership of the parcel or that the issue of ownership had already been adjudicated.

Concerning parcels L22, 23B and 23, which had not been included in Bell's permit applications, Bell was to present proof by February 29, 1980 that his right to advertise on these parcels was not extinguished by the Department of Transportation and that he was not encroaching on state property. Any advertising was to be removed by January 31, 1980.

Opinion No. 80-531, Judge Thompson September 28, 1983.

Similarly, the parties agreed that any advertising copy would be removed from L2R by January 31, 1980. Bell was to present proof of his interests in this parcel by February 29, 1980. Monteforte warned that, "[s]hould any of the required documentation not be produced to the satisfaction of the Department of Transportation by the aforesaid dates, the subject signs will be removed without further notice." There is nothing in the record to indicate what level of documentation would satisfy the Department of Transportation or the manner in which any documentation would be evaluated.

No documentation was submitted to the Department of Transportation. Instead, plaintiff filed this suit on February 26, 1980. Although most of the allegations contained in the original complaint had been the subject of prior court actions, plaintiff once again raised a broad conspiracy theory concerning events occurring as far back as 1968. The amended complaint of June 10, 1980 makes similar allegations. The amended complaint charged a variety of defendants with violating plaintiff's right to due process by refusing to process his applications for permits and threatening to remove the billboards in place. Paragraph 13 of the amended complaint asserts that defendants improperly returned the applications even though certain parcels and the right to advertise thereon were the subject of negotiations between the parties. Plaintiff also asserted that defendants' threat to remove the signs was improper because defendants knew that the issues involved were the same as those presented in the January 1978 hearing. Among other requests for relief, plaintiff sought an order directing defendants to continue the January 1978 hearing.

Opinion No. 80-531, Judge Thompson September 28, 1983.

In his affidavit filed with the court on July 30, 1982, plaintiff again rases the issue of the January 1978 hearing. Plaintiff states that he has not yet had an opportunity to present his proofs, "and obviously there has been no final administrative determination" by the Department of Transportation.[6] Since he now believes that the Department of Transportation would be prejudiced against him, plaintiff no longer seeks continuation of the hearing. Rather, plaintiff wants this court to determine the merits of his permit applications. In this affidavit and in a subsequent affidavit filed with the court, plaintiff presents some evidence of his interest in L2R. At no time has plaintiff indicated that he has asked the Department of Transportation to continue with the hearing or that he did not agree to the procedures noted in Monteforte's February 5, 1980 letter to plaintiff's counsel.

Whether or not the remaining defendants have violated plaintiff's right to due process depends upon an analysis of the factors set forth in *Mathews, supra.* Since minimum procedural requirements are a matter of federal law, the existence or non-existence of state procedures does not control. *Vitek v. Jones,* 445 U.S. 480, 491 (1980). Thus, as noted earlier, the state's contention that no hearing is necessary since none is provided by statute for a person seeking a permit is in error.

Plaintiff has a property interest in his billboards and in the use of property in which he has a legal interest of some kind. At least "*some* form of hearing" is required before a punitive owner may be finally deprived of a protected property interest. *Roth, supra,* at 570-71 n. 8 (emphasis in original). As discussed above, the form of

hearing and the timing of hearing is flexible, as long as plaintiff is accorded an opportunity to be heard at a meaningful time and in a meaningful manner. *Parratt v. Taylor*, 451 U.S. 527, 540 (1981) (citation omitted). In the instant case, plaintiff did not challenge in his amended complaint the adequacy of the state's procedures affording him a hearing. Rather, plaintiff alleged that the state denied him due process by failing to continue a hearing which had been started. It was only when the court started questioning the state as to the basis for such a hearing and as to the contours of that hearing that plaintiff belatedly challenged the hearing which he was seeking to have continued.

As discussed earlier, since the state owned the other parcels in question and the issue of ownership had finally been determined in the courts, there was no violation of due process in rejecting plaintiff's applications for permits and in seeking to remove billboards located on state property. If there had been a question as to the location of the billboards, defendants would have to have afforded plaintiff an opportunity to show that he was not encroaching on state property.[7] Plaintiff, however, has not shown that there was a dispute at that time concerning the location of the billboards, as opposed to a dispute concerning the ownership of the parcels on which the billboards were located.

Based upon the undisputed facts contained in the record, the court holds that the procedures followed by the state in this instance did not violate due process. All parties agree that a permit was required for the billboards. Since no permit had been secured, there was ample justification for the state to notify plaintiff of a violation. For those parcels and for others on which no

billboards had been erected, the application form itself requires that an applicant have permission of the owner to erect or maintain billboards. The validity of that requirement cannot be doubted. Since the state had good reason to believe that it was the owner of the parcels in question, it had good reason to reject the applications or at least to require plaintiff to offer some documentation that he had the permission of the "owner" of the parcels. Even if plaintiff had possessed an ownership interest in the parcels, the state may refuse to issue a permit or move to destroy the billboards if the applicant has failed to comply with a reasonable procedural or evidentiary requirement, in this case, the filing of some documentation as to ownership or permission to use the land. *See Logan, supra,* at 437 *and cases cited therein. See also Holman, supra,* at 7 & n. 3. Since the undisputed affidavits indicate that plaintiff did not submit any documentation, defendants did not violate due process by refusing his application or threatening to remove the billboards.

Plaintiff has contended that the state was required under the circumstances to bring a quiet title action before removing any billboards. The court cannot accept this contention. First, it is clear that despite the state's contention that plaintiff's failure to supply it with proof of ownership is an "admission" of state ownership, the state had no authority to make such a determination. The state could, however, have deemed failure to supply it with information an admission that plaintiff did not have permission to use the parcel for purposes of plaintiff's application for permits on that parcel. Thus, the state's determination of ownership by default, if it in fact made such a determination, cannot be legally binding.

Opinion No. 80-531, Judge Thompson September 28, 1983.

Second, to require a quiet title action, a formal judicial procedure, prior to putting administrative machinery to work, would cause unnecessary delay and expense to all parties under the circumstances. If in fact an applicant had submitted at least some documentation to contest the state's ownership of a parcel, due process may require the initiation of a quiet title action prior to the state removing billboards. Regardless of the level of proof of a dispute necessary to force a quiet title action, in this case plaintiff did not submit any evidence indicating that an actual dispute existed. In addition, by conferring with plaintiff's counsel and reaching an agreement as to the manner in which plaintiff would offer proof of his entitlement to erect or maintain billboards, defendants satisfied the requirements of due process. At least at the initial stage of the proceedings, more than this informal agreement was not necessary. There is nothing in the record to contradict Monteforte's certification that the parties agreed to what was set forth in the February 5, 1980 letter.

Even if the parties had not agreed to what was set forth in the letter, the Supreme Court "has determined that the requirements of due process can be satisfied with the provision of informal meetings between a claimant and a person empowered to grant or deny the claim." *Holman, supra*, at 18 (citations omitted). In *Memphis Light, Gas & Water Div'n v. Craft*, 436 U.S. 1, 16 n. 17 (1978), the court stated that the "opportunity for informal consultation with designated personnel empowered to correct a mistaken determination constitutes a 'due process hearing' in appropriate circumstances." Thus, the concept of due process does not require a state agency to institute a formal

proceeding with all the trappings such a proceeding entails prior to an applicant indicating in writing that a real dispute even exists. Plaintiff's failure to submit documentation of a claim provided the state with ample justification to deny applications for permits until that documentation was submitted to them.

Any belated challenge to the adequacy of the state procedures will be denied because the procedures offered to plaintiff at the time in question and the informal agreement to which plaintiff consented satisfied due process. In *Hagen v. Traill County*, _____ F.2d _____, No. 82-1785 (8th Cir. June 6, 1983) (*per curiam*), plaintiff brought a civil rights action against various municipal officials for destroying his buildings and personal property without affording him due process. Township officials notified plaintiff that his property presented a health hazard and instructed him to abate the hazards or that property would be destroyed. Plaintiff was permitted to discuss the conditions of the parcel of land with township supervisors. After a few months had passed, and plaintiff was again warned, the township abated the nuisance and buried the debris located on plaintiff's property.

The district court dismissed plaintiff's claim that he was not given adequate procedural protection in that he was given insufficient notice and hearing prior to destruction of his mobile home and its contents by the county. In affirming the district court, the Eighth Circuit noted that plaintiff had been notified by letters of the county's intent to take action and was given an opportunity to abate the nuisance. Plaintiff did not request further hearings on the matter. The Eighth

Opinion No. 80-531, Judge Thompson September 28, 1983.

Circuit rejected plaintiff's contention that he was denied due process in that the applicable state statute made no provision for notice or an opportunity to be heard before the county. In reaching its decision, the court stated: " '[I]f there is no constitutional defect in the application of the statute to a litigant, [there is] not . . . standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations.' " *Id.*, slip op. at 3, *quoting County Court of Ulster County v. Allen*, 442 U.S. 140, 155 (1979).

Thus, not only did the state not deny due process by rejecting plaintiff's application and continuing to threaten to remove plaintiff's billboards because plaintiff had not submitted proof of entitlement to such billboards, but under these circumstances, plaintiff also may not challenge the adequacy of the state procedures.

Since the suit has been filed, plaintiff has submitted to this court some documentation of his claim to use parcel L2R. As far as this complaint is concerned, however, plaintiff was not denied due process at the pertinent time. The court will enter an appropriate order dismissing the amended complaint.

September 22, 1983

Opinion No. 80-531. Judge Thompson September 28, 1983.

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[1] N.J.A.C. 16:41-8.12, entitled notice of revocation of license or permit, allows a licensee or permittee to file a protest and to request a hearing when he has been notified that he has violated N.J.A.C. 16:41-8.11, which defines the bases for revocation of a license or permit. Since plaintiff does not hold a permit, the regulations do not provide for an administrative hearing for persons in plaintiff's position. *See Southern New Jersey Newspapers, supra,* at 178 n. 9.

[2] The Superior Court of New Jersey, not the Department of Transportation, can properly determine the question of title. Documents submitted by defendants to the court indicate rather generally that the hearing was to determine plaintiff's entitlement to a permit for the billboards. A letter from the hearing examiner indicates that the state was expected to show its interest in the parcel and plaintiff would be given an opportunity to present evidence indicating his right to a permit.

[3] Of course, if the state had acquired the parcel under the Act, plaintiff would not have been entitled to maintain any signs on the parcel since it fell within the right-of-way.

[4] Technically, the issue of the location of the billboards was not before the federal court in Civ. No. 77-1531. However, as noted earlier, the complaint in that matter, as well as the verified petition for temporary restraints in this matter, establish that the billboards are located on the parcels in question, including L2R.

[5] While it may appear obvious that plaintiff's counsel had mistakenly believed that all issues that would have been presented to the hearing examiner were raised in the court proceedings, including the status of L2R, such a finding cannot of course be made on a motion for summary judgment.

[6] Plaintiff has recently informed the court that defendants have abandoned condemnation proceedings concerning this parcel. The state had initiated condemnation proceedings against this parcel in 1972.

[7] "The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. 'To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.' " *Fuentes, supra,* at 87, *quoting Coe v. Armour Fertilizer Works,* 237 U.S. 413, 424 (1915).

NEW JERSEY STATE POLICE — OPERATIONS REPOR

1. Station / XX	2. Code	3. Incident	4. Date	5. Time	6. Case Number
Tuckerton	A12	Assist NJ DOT	9-30-83	8AM ☐ PM ☐	09-62R

7. Victim / [redacted]	7A. D.O.B.	7B. S.S. Number
State Of New Jersey		

8. Address	8A. Phone (Area Code)
Dept of Transportation	

9. Location of Incident (Street / Highway)	9A. Municipality	9B. County	9C. Mun. Code
SH #72 Stafford Twp	Manahawkin	Ocean	1530

10. VEHICLE INFORMATION	Make	Year	Body Type	Color	Registration	Vehicle Identification Number

11.

12.

13.

14. NARRATIVE

This date Sgt. F.Klimecke #1892 and Tpr.1 T. Braddock both of the Tuckerton Barracks were detailed by Capt. Charles J. Dalton, Troop "A" Commander to assist NJ DOT regarding the removal of illegally located billboard signs along both sides of SH #72.

Proceeded with Tpr. Braddock to the above location, met with Supervisor Donald Hendrickson, NJ DOT and along with John Netterman Supervisor of NJ DOT Highway and Roadside Use and their crew of men work commenced with the removal the above signs, Mayor of Stafford Twp., Wesley Bell also owner of WES OUTDOOR ADV. CO. had constructed at 7 different locations the billboards and same had been ordered removed by US District Court Judge Ann Thompson.

Wesley Bell arrived at the scene almost immediately with Stafford Twp Building Inspector Louis Raupp who posted on one of the billboards a work stoppage order, same being disregarded. Mr. Bell was advised that only an injunction from the court would be obeyed, the work continued. Bell attempted to get an injunction from the court but was unsuccessful.

It should be noted that no incidents or problems were encountered.

PHONE NUMBERS
Hendrickson-----597-2166
Netterman-------292-4247
Raupp-----------597-8271
Bell------------597-3222
Deputy AD Nicholas Monteforte.

15. Rank / Name (Print or Type)	16. Badge No.	17. Page	18. Date	19. Reviewed By	20. Pending	21. Complete
Sgt. F.Klimecke Signature F.Klimecke	1892	1 of 1 Pages	9-30-83	FK		XXX

S.P. 178 (3-81)

401a
State Police Report, September 30, 1983

Order Denying Stay No. 80-531,
October 6, 1983

ORDER DENYING STAY OF JUDGMENT

Original Filed
Oct 6 1983
Allyn Z. Lite, Clerk

IRWIN I. KIMMELMAN
Attorney General of New Jersey
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UNITED STATES DISTRICT COURT
District of New Jersey

Civil Action No. 80-531

Hon. Anne E. Thompson, U.S.D.J.

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff.

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Order Denying Stay No. 80-531, October 6, 1983.

This matter having been opened to the court by Sterns, Herbert & Weinroth, P.A., attorneys for plaintiff (Richard M. Hluchan, Esquire, appearing) and Irwin I. Kimmelman, Attorney General of New Jersey, attorney for defendants (by Richard J. Harcar, Deputy Attorney General) appearing in opposition, and the court having considered the motion, affidavits and oral argument of counsel, for the reasons expressed in open court, and for good cause, it is hereby ORDERED on this 6th day of Oct, 1983, that the plaintiff's motion for an order staying the judgment of the court dated September 28, 1983, pending appeal to the United States Court of Appeals for the Third Circuit, and for an injunction restraining defendants from removing any billboards owned by plaintiff located along New Jersey Route 72 in Ocean County, New Jersey, is denied.

ANNE E. THOMPSON
Anne E. Thompson, *U.S.D.J.*

Order No. 83-5760. Third Circuit
June 15, 1984

JUDGMENT ORDER

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 83-5760

WESLEY K. BELL, Individually and d/b/a
Wes Outdoor Advertising Co.,

Appellant,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES and NEW JERSEY
DEPARTMENT OF TRANSPORTATION.

(D.C. Civil No. 80-0531)

On Appeal From the United States District Court
for the District of New Jersey.

(Hon. Anne E. Thompson, *District Judge*)

Submitted: May 14, 1984
Before: GIBBONS, GARTH and MARIS,
Circuit Judges

WESLEY K. BELL, *Pro Se*
188 Route 72
P. O. Box 538
Manahawkin, New Jersey 08050

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625

Order No. 83-5760, Third Circuit June 15, 1984.

Of Counsel:
JAMES J. CIANCIA
Assistant Attorney General

On the Brief:
NICKOLAS F. MONTEFORTE
Deputy Attorney General
Attorneys for Appellee

The court having considered the briefs of the parties in light of the record, it is

ORDERED, ADJUDGED and DECREED:

1. That the motion of the State of New Jersey to strike plaintiff's brief and appendix be and the same is hereby denied;

2. That the motion of the State of New Jersey to dismiss appeal for lack of prosecution be and is hereby denied;

3. That the motion by appellant for leave to file supplemental appendix be and is hereby granted;

4. That the motion by appellant for leave to file an enlarged reply brief out of time be and is hereby granted;

5. That the motion by the State of New Jersey for an enlargement of time to file its brief be and is hereby granted;

6. That the motion by appellant to file additional materials be and is hereby denied as moot;

Order No. 83-5760, Third Circuit June 15, 1984.

7. That the judgment appealed from be and is hereby affirmed.

Costs taxed in favor of the appellees, not including the motions.

BY THE COURT,

JOHN J. GIBBONS
Circuit Judge

Affirmed:

SALLY MRVOS
Sally Mrvos, *Clerk*

Dated: Jun 15 1984

Rehearing Denied No. 83-5760, July 24, 1984

SUR PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 83-5760

WESLEY K. BELL, individually and d/b/a
Wes Outdoor Advertising Co.,

Appellant.

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES and NEW JERSEY
DEPARTMENT OF TRANSPORTATION.

(D.C. Civil No. 80-0531)

Present: ALDISERT, *Chief Judge*, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER and MARIS, * *Circuit Judges.*

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *in banc*, the petition for rehearing is denied.

By the Court,

JOHN J. GIBBONS
Judge

Dated: Jul 24 1984

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* As to panel rehearing only.

Opinion—Judge Thompson January 20th 1987

IN THE
UNITED STATES DISTRICT COURT
For the District of New Jersey

Civil Action No. 86-1477

WESLEY K. BELL,

Plaintiff,

vs.

STATE OF NEW JERSEY, *et al.*,

Defendants.

OPINION
TRANSCRIPT OF PROCEEDINGS

Trenton, New Jersey
January 20, 1987

Before:
The Honorable Anne E. Thompson, U.S.D.J.

Appearances:
Wesley K. Bell,
Pro-Se Plaintiff

W. Cary Edwards, Attorney General
By: Richard J. Harcar, DAG
For the Defendants

Following transcript is certified to be an accurate record as taken stenographically in the above entitled proceedings, pursuant to Section 753 Title 28 United States Code, the

VINCENT RUSSONIELLO
Vincent Russoniello, Court Reporter

Opinion—Judge Thompson January 20th 1987.

[2] THE COURT: This matter comes before this Court on a motion by defendants to dismiss this action on the grounds that both *res judicata* and collateral estoppel apply to the plaintiff's claims. Plaintiff alleges that the defendants have conspired to violate his civil rights in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §1983, §1985(3), and §1986, as well as the First, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution. Plaintiff alleges that the State of New Jersey, the State of New Jersey Department of Transportation (DOT) and various state employees, under color of the Highway Beautification Act and beginning sometime in 1968, have conspired to put plaintiff out of business by condemning his properties, denying his permits for outdoor advertising and wrongfully removing his billboards. Mr. Bell has previously filed numerous cases involving these same issues in both state and federal courts. Two of these prior cases have been heard by this Court.

In 1977 plaintiff filed *Bell v. New Jersey,* Civ. No. 77-1531 [hereinafter referred to as Bell I]. On December 8, 1977 plaintiff's complaint was dismissed against both New Jersey and the DOT by Judge Barlow. The complaint was then dismissed in its entirety *with prejudice* on March 15, 1978 by Judge Barlow. Mr. Bell appealed Judge Barlow's [3] decision in Bell I to the Third Circuit. In No. 78-1578 (January 24, 1979) the Third Circuit upheld the District Court's dismissal. Subsequently the United States Supreme Court denied certiorari (No. 78-1554) on June 4, 1979. Mr. Bell's motion for rehearing of the denial of certiorari was denied by the Supreme Court on October 1, 1979.

Opinion—Judge Thompson January 20th 1987.

Mr. Bell's second case before this Court was filed in 1980, *Bell v. New Jersey,* Civ. No. 80-531 [hereinafter referred to as Bell II]. In an oral opinion dated April 25, 1980 Judge Ackerman dismissed with prejudice all claims in Bell II which alleged violations of 42 U.S.C. §§1985(3) and 1986. He concluded that Mr. Bell was collaterally estopped from litigating these claims by Judge Barlow's opinion and order in Bell I. Judge Ackerman also dismissed all damages claims against the state and the DOT pursuant to the Eleventh Amendment to the United States, *Quern v. Jordan,* 440 U.S. 332 (1979), and because this issue, too, had been decided by Judge Barlow in Bell I. An order was entered consistent with Judge Ackerman's opinion on May 27, 1980. An interlocutory appeal from Judge Ackerman's order was dismissed by the Third Circuit on July 21, 1981.

Following Judge Ackerman's order plaintiff filed an amended complaint against the four remaining defendants, the State of New Jersey, the DOT, Attorney General Degan and Dorothy L. Andres, Supervisor of Outdoor Advertising, [4] Permits, and Highway Markings of the DOT. On July 12, 1982, this Court issued an oral opinion which concluded that the signs which were located on map parcels: L-11B, L-22, 23, and 23B, L-4B, L-17G, L-17D, L-22B, L-22C, and L2R-31D had all been the subject of prior litigation before this Court. The Court ruled that summary judgment was appropriate but allowed plaintiff 20 days to supply additional documentation to the Court. On December 17, 1982 this Court filed a subsequent opinion which requested additional information on the procedures used by the state to determine whether to condemn certain of plaintiff's billboards.

Opinion—Judge Thompson January 20th 1987.

In an opinion issued on September 28, 1983 this Court granted summary judgment for all remaining plaintiffs in Bell II concluding that the state's rejection of Mr. Bell's applications for permits for billboards on certain parcels of land and its notices to plaintiff to remove the billboards standing in these areas did not violate Mr. Bell's Fifth and Fourteenth Amendment rights to due process of law. On October 6, 1983 this Court denied plaintiff's motion for a stay pending appeal to the Third Circuit of the Court's judgment of September 28, 1983. The Court also denied plaintiff's request for an injunction restraining defendants from removing the billboards located along Route 72 in Ocean County which had been the subject of Bell I and Bell II. On June 15, 1984 the Third Circuit affirmed the [5] district court's order granting summary judgment to defendants. (No. 83-5760).

All but one of the defendants named in the case now before the Court [hereinafter referred to as Bell III] were named in both of the prior cases brought by Mr. Bell before this Court. Nickolas Montefort, Deputy Attorney General for the State of New Jersey, is the sole defendant not mentioned in the previous case, although he was an attorney of record for one of the defendants in Bell II. The defendants argue that the doctrines of *res judicata* and collateral estoppel apply to Mr. Bell's complaint and the complaint should be dismissed. Since the Court will be considering documents submitted by both parties in addition to the original pleadings, the Court will treat this motion as a motion for summary judgment pursuant to F.R.C.P. 56(c).

The standard for establishing that *res judicata* applies establishes that:

> when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound 'not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that [6] purpose.' *Cromwell v. Sac County,* 94 U.S. 351, 352. The judgment puts an end to the cause of action which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. *Commissioner v. Sunnen,* 333 U.S. 591, 597 (1948).

Thus, if the matters now raised by Mr. Bell have been previously before this Court and a final decision of this Court was entered concerning these claims, then they cannot be again placed before this Court.

The doctrine of collateral estoppel holds that when an issue is actually and necessarily decided by a court, then that ruling is determinative on that issue in any subsequent suits which are brought based on a different cause of action but involving a party to the original litigation. *Montana v. United States,* 440 U.S. 147, 153 (1979). As the Supreme Court notes in *Montana* there are important reasons for the *res judicata* and collateral estoppel doctrines. "[t]o preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Id.,* at 153-54.

[7] Defendant Joseph Cunningham retired from state employment on March 1, 1978 and died on June 12, 1980. Defendant Clarence Pell retired from state employment on December 1, 1979. Defendant Vincent Stolowski is employed by the State of New Jersey Division of Taxation. He has not been involved with outdoor advertising since responsibility for it was transferred from the Division of Taxation to the Department of Transportation on July 1, 1972. Defendant Russell H. Mullen is an employee of the Department of Transportation, but has not served as an assistant commissioner since February 1981. Since 1981 he has had no involvement with the regulation of outdoor advertising. (See Affidavit of Russell H. Mullen). None of the defendants have been involved with the regulation of outdoor advertising since summary judgment was granted by this Court in Bell II. None of these defendants can be held liable for the events which transpired in 1983 or 1986, these events are the only events which plaintiff specifically alleges have occurred since Bell II was decided.

The complaint in Bell III consists for the most part of claims previously litigated in Bell I and Bell II. Those counts that were adjudicated in prior actions of this Court and the Third Circuit are covered by both *res judicata* and collateral estoppel and plaintiff is barred permanently from litigating those claims. Dismissal of a case with [8] prejudice as was entered by the Court in Bell I and summary judgment as entered in Bell II constitute a ruling on the merits and have precisely the same effect upon questions of *res judicata* and collateral estoppel as would a verdict after a trial. Plaintiff has fully litigated those claims. *Gambocz v. Yelencsics*, 468 F.2d 837, 840

(3d Cir. 1972). On those claims that have been litigated before this Court previously we will grant summary judgment for the defendants.

¶10 of plaintiff's complaint in Bell III is virtually identical to ¶¶18 and 19 in Bell I and ¶¶17, 18, 19, and 21 in Bell II. It alleges a broad conspiracy by the DOT and individual defendants to violate plaintiff's civil rights and to wrongfully condemn his lands. These claims have previously been fully litigated by this Court and summary judgment will be granted for the defendants on ¶10.

¶14 of the complaint in Bell III involves parcel L2R-31D (referred to as "H" in plaintiff's Exhibit #9). This parcel was the subject of ¶25 of Bell I and ¶¶34 and 52 of Bell II. In this Court's decision of September 28, 1983 the Court specifically discussed this particular parcel and concluded that plaintiff's due process rights had not been violated. (Defendants' Exhibit M, p. 20). Summary judgment for the defendants will be granted on ¶14 as it relates to all defendants except Nickolas Monteforte. The Court will discuss the charges against Mr. Monteforte later in this [9] opinion.

¶16 of Bell III refers to the condemnation of billboards on parcel L-11B. This condemnation was previously the subject of ¶25 of Bell I and ¶52 of Bell II. The condemnation of this parcel has been previously ruled on by this Court. The Court will grant summary judgment for the defendants on ¶16.

¶17 is once again a broad allegation that DOT illegally removed the billboards discussed in the above paragraphs. As noted above this claim was litigated and

dismissed in both Bell I and Bell II (See Defendants' Exhibit M. pp. 1-2). Defendants' motion for summary judgment will be granted on ¶17.

¶18 charges th defendants with the wrongful condemnation of plaintiff's lands designed to put plaintiff out of business. It is the same allegation that is contained in ¶¶18, 19, 20, 21, and 25 of Bell I and ¶¶20, 30, 48 and 52 of Bell II. These charges have previously been dismissed with prejudice by this Court. The Court grants defendants' motion for summary judgment on ¶18.

¶19 of the present complaint accuses defendant Pell of false swearing. It is identical to ¶24 of Bell I and ¶33 of Bell II. ¶20 of the present complaint is identical to ¶21 of Bell I and ¶31 of Bell II. ¶21 of the present complaint makes the same allegation as ¶26 of Bell I and ¶35 of [10] Bell II. ¶22 of the present complaint alleges that defendant Stolowski has harassed plaintiff and is guilty of false swearing. These same charges were made in ¶28 of Bell I and ¶36 of Bell II. ¶¶23, 24, and 25 of the present complaint contain additional charges against defendant Stolowski and the State of New Jersey. These charges are identical to those made in ¶¶29, 30, 31 and 33 of Bell I and ¶¶37, 38, 43, and 45 of Bell II. Finally ¶26 of the present complaint alleges improper removal of plaintiff's signs. It is identical to ¶¶34 and 35 of Bell I and ¶¶46 and 47 of Bell II. Each of the above paragraphs in the present co plaint have been the subject of previous rulings on the merits by this Court. They were dismissed with prejudice and plaintiff is barred from bringing them before this Court. Summary judgment is granted for the defendants on ¶¶19, 20, 21, 22, 23, 24, 25 and 26.

¶27 is another broad allegation that the plaintiff has been generally harmed by defendants' actions. It is similar in nature to ¶48 of Bell II. All the specific allegations that constitute the harm which plaintiff charges in these vague claims have been previously litigated before this Court. Defendants' motion for summary judgment is granted as to ¶27.

¶28 contains an allegations that plaintiff is being denied relocation funds. Plaintiff gives no [11] indication that such funds are available or that he is entitled to them. ¶28 is dismissed with prejudice for failure to state a claim.

¶29 makes no precise allegation as to what right of plaintiff is being harmed. The allegations, however, are the same as those made in ¶56 of Bell II. Summary judgment was previously granted on that claim and plaintiff is barred from relitigating it. Defendants' motion for summary judgment is granted as to ¶29.

The only claims now remaining before this Court are ¶¶11, 12, 13, 15 and a portion of ¶16. The Court will now review these claims in order. ¶¶11 and 12 of the present complaint allege that on February 14, 1986 defendant DOT improperly removed several of plaintiff's billboards and some pieces of framework on which billboards are usually mounted. The state acknowledges that it did make a mistake in removing the signs and the framework. It states that it has offered to reimburse plaintiff; nowever, plaintiff refuses to accept any compensation. The defendants argue that ¶¶11 and 12 do not state a federal civil rights claim and that the DOT cannot be sued for monetary damages. The DOT is the only named defendant in these two counts. Pursuant to

the Eleventh Amendment of the United States Constitution the state cannot be sued for monetary damages, although it can be sued for injunctive relief. *Spicer v.* [12] *Hilton*, 618 F.2d 232, 236 (1980). Plaintiff, therefore, only has claims for injunctive relief remaining in ¶¶11 and 12. Furthermore, a civil rights action cannot be maintained against a governmental entity rather than individual employees unless the plaintiff can show that the actions stemmed from an official governmental policy which caused the alleged discrimination. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 691 (1978). Plaintiff has produced no evidence of an official policy to violate his rights by wrongfully removing his signs. Although plaintiff has alleged in both Bell I and Bell II that the state has been deliberately harassing him, in both cases these charges were dismissed as unsupported by the evidence. Plaintiff has provided this Court with no evidence of an official policy of the state which led to this mistaken removal of the billboards. In fact DOT, through its attorney, acknowledges that its employees made a mistake in removing the signs and the frameworks and has offered to reimburse plaintiff. There is no evidence of malice in the action by the DOT employees nor is there any evidence of an official policy which was responsible for the removal. Summary judgment is granted for defendants on ¶¶11 and 12.

¶13 relates to events which occurred on September 30, 1983. These events involve the removal of several billboards which were the subject of the two prior cases filed [12] in this court by Mr. Bell. This Court granted summary judgment in Bell II acknowledging the state's right to remove the signs along Route 72 in Ocean

County. The state immediately began to remove the signs and Mr. Bell attempted to prevent them from doing so. This Court denied plaintiff's motion for an injunction preventing the removal of these signs (Order of this Court dated October 6, 1983, Defendants' Exhibit N). The issue of whether the state had the right to remove these signs was litigated before this Court in Bell I and Bell II. That issue was resolved by this Court in the state's favor. Under *res judicata* plaintiff cannot litigate that issue again. The rest of ¶13 alleges that the state "attempted" to remove a billboard that was built on the same site from which Mr. Bell's billboard was removed on September 30, 1983. Mr. Bell has no cause of action against the state because the state did not remove the sign after discovering that its location was different from that of the sign previously removed. The motion for summary judgment will be granted as to ¶13 for the defendants.

¶15 also seeks damages for the removal of other billboards which were involved in Bell I and Bell II. Several of the signs are the same as those referred to in ¶13 and for the reasons cited above plaintiff has no valid claim before this Court as to the removal of those signs. As to the signs on Lots 3 and 4, Block 298 (referred to by [14] plaintiff as "J" in Exhibit #9) and Lot 31, Block 147 (referred to by plaintiff as "H" in Exhibit #9), the state attests that these signs are still standing as indicated by plaintiff's Exhibits 29, 30, 31, 32 and 33. Since these signs remain standing, plaintiff has no cause of action against the state for their destruction. Summary judgment will be granted for defendants on ¶15.

Opinion—Judge Thompson January 20th 1987.

Lastly we examine the allegations against defendant Monteforte in ¶14. Mr. Monteforte is the Deputy Attorney General who represented one of the defendants in Bell II. Mr. Bell alleges that Mr. Monteforte misrepresented facts to this Court in Bell II. Upon examination of Mr. Monteforte's certification introduced in Bell II (Plaintiff's Exhibit #10), it appears to this Court that Mr. Monteforte does not make the claims which Mr. Bell alleges that he has made. Mr. Bell contends that Mr. Monteforte claimed he was unaware of plaintiff's recorded easement; however, in ¶19 of his certification Mr. Monteforte notes that the DOT knew of the recorded contract of sale for parcel E31B/L2R31D to Mr. Bell and for this specific reason gave Mr. Bell the opportunity to produce documentation showing his entitlement to a permit for a billboard on the parcel. Mr. Bell's allegations against Mr. Monteforte fail to state a claim. Summary judgment is granted for the defendants on the remaining sections of ¶14.

[15] This Court has granted defendants' motion for summary judgment on all charges contained in Mr. Bell's complaint. The Court will also deny defendants' request for Rule 11 sanctions and with some hesitation for attorney's fees under 42 U.S.C. §1988. The Court finds that Mr. Bell does not seem to understand that when a motion for summary judgment is granted the litigation is over. A motion for summary judgment constitutes a full and fair hearing on the merits of a claim. Once a motion for summary judgment is granted for the defendants the plaintiff has no right to a trial on the claims he has presented to the court. Noting that this is the third time that Mr. Bell has filed these claims in federal court, we will also order that Mr. Bell is now barred from any

future litigation concerning the events described in this complaint and concerning the litigation surrounding these events. An injunction will be entered by this Court. When plaintiff's claims are dismissed and defendants' motion for summary judgment is granted, a decision on the merits has been rendered. Mr. Bell has acted within his rights and appealed this Court's previous decisions. The Appellate Court has upheld this Court's rulings. Mr. Bell is not entitled to any further litigation of these claims. This Court will order that Mr. Bell be barred from filing any further complaints based on the facts surrounding this complaint against the defendants [16] in this case or against the defendants' attorneys.

The Court will enter its own order.

Order—Judge Thompson January 27th 1987

UNITED STATES DISTRICT COURT
District of New Jersey

Civil No. 86-1477 (AET)

WESLEY K. BELL, etc.,

Plaintiff,

v.

STATE OF NEW JERSEY, *et al.,*

Defendants.

Original Filed
Jan 27 1987
William T. Walsh Clerk

OPINION

This matter having come before the court on defendants' motion for summary judgment and the court having read the submissions of counsel and heard oral arguments and for good cause shown; it is on this 21st day of January 1987,

ORDERED that defendants' motion for summary judgment is granted in its entirety; and it is further

ORDERED that defendants' motion for Rule 11 sanctions and attorney's fees be and hereby is denied; and it is further

ORDERED that plaintiff Wesley K. Bell is barred from filing any further complaints concerning this matter, concerning litigation surrounding this matter, or against the lawyers representing the defendants in this matter.

ANNE E. THOMPSON
Anne E. Thompson, *U.S.D.J.*

Order of Dismissal—U.S. Court of Appeals Third Circuit October 21, 1987

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 87-5087

WESLEY K. BELL individually and ta/a
WES OUTDOOR ADVERTISING,
Appellant,

v.

STATE OF NEW JERSEY, N.J. DEPT OF TRANSPORTATION, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI, NICKOLAS F. MONTEFORTE, and JOSEPH CUNNINGHAM

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 86-1477)
District Judge: Honorable Anne E. Thompson

Submitted Pursuant To Third Circuit Rule 12(6)
July 1, 1987
Before: WEIS, BECKER, AND MARIS,
Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

Order of Dismissal—U.S. Court of Appeals Third Circuit October 21, 1987.

ADJUDGED AND ORDERED that the judgment of the district court entered January 27, 1987 be and the same is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

WEIS
Circuit Judge

Attest:
Sally Mrvos
Clerk
Date: Oct 21 1987

Costs taxed in favor of Appellees as follows:

Supplemental Appendix	$290.00
Brief	$179.00
Supplemental Brief	$ 92.00
TOTAL	$561.00

Certified as a true copy and issue in lieu of a formal mandate on November 12, 1987.

Test:

M. ELIZABETH FERGUSON
Chief Deputy Clerk
United States Court of Appeals
for the Third Circuit

Notice of Appeal November 3, 1987

WESLEY K. BELL, C.R.E.A.
(Logo) Appraisal Consultant

188 Route 72 — P.O. Box 538 —
Manahawkin, New Jersey 08050 — (609) 597-3222

November 3rd., 1987

Office of the Clerk
United States Court of Appeals
21400 United States Courthouse
601 Market Street
Philadelphia, Pa., 19106-1790

Re: Wesley K. Bell, etc. v.
State of New Jersey, et al
Docket No. 87-5087

Dear Clerk:

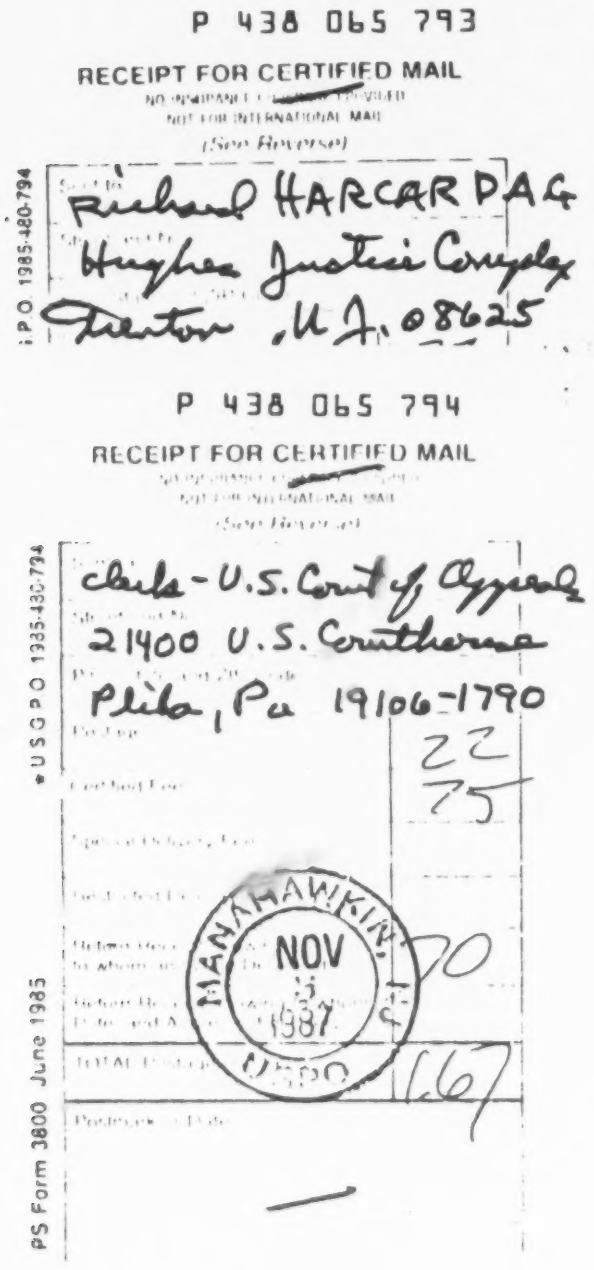
Please take NOTICE that I hereby appeal the Court's dismissal, in full, of the above docketed case, to the United States Supreme Court.

Respectfully submitted,

WESLEY K. BELL
Wesley K. Bell, *Pro Se*

copies by Certified Mail to: Richard Harcar, Esq.

Notice of Appeal November 3, 1987.



Notice of Appeal November 10, 1987

File Copy

WESLEY K. BELL, C.R.E.A.
(Logo) Appraisal Consultant

188 Route 72 — P.O. Box 538 —
Manahawkin, New Jersey 08050 — (609) 597-3222

November 10th 1987

Supreme Court of the United States
Washington, D. C. 20543

Re: WESLEY K. BELL t/a WES OUTDOOR ADVERTISING v. STATE OF NEW JERSEY et al Docket Number 87-5087 from United States Court of Appeals for the 3rd. Circuit

Attention: Clerk of the Court

Dear Sirs:

After receiving the attached letter dated November 5th 1987 from the United States Court of Appeals today, I telephoned your office and was instructed that I must file a copy of my NOTICE OF APPEAL with your office.

Also attached is a copy of my Notice of Appeal originally mailed by Certified Mail to the Clerk of the U. S. Court of Appeals for the Third Circuit.

Notice of Appeal November 10, 1987.

Please inform me of my deadlines to file my Briefs.

Respectfully submitted,

WESLEY K. BELL
Wesley K. Bell, *Pro Se*
P. O. Box 538 - 188 Rt. 72
Manahawkin, New Jersey 08050
609 - 597 3222 or 597 0800

copies by (illegible)

P 663 433 269

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to Clerk - U.S. Court of Appeals
Street and No. 21400 U.S. Courthouse
P.O. State and ZIP Code Phila. Pa. 19106-1790

P 663 483 270

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to Richard J. Hughes Justice Complex D.A.G.
Street and No.
P.O. State and ZIP Code Trenton, N.J. 08625

P 663 487 268

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to Clerk - U.S. Supreme Court
Street and No. #1 First St. N.E.
P.O. State and ZIP Code Washington, D.C. 20543

Postage	$.22
Certified Fee	.75
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.70
Return Receipt showing to whom, Date and Address of Delivery	
TOTAL Postage and Fees	$1.67
Postmark or Date	NOV 10 1987

PS Form 3800, June 1985

Order for Extension January 7, 1987
U.S. Supreme Court

SUPREME COURT OF THE UNITED STATES

No. A-525

WESLEY K. BELL,

Applicant,

v.

NEW JERSEY, ET AL.,

ORDER

UPON CONSIDERATION of the application of the applicant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including March 19, 1988.

s/ WILLIAM J. BRENNAN, JR.
Associate Justice of the Supreme
Court of the United States

Dated this 7th day of January, 1988.

STAFFORD TOWNSHIP POLICE DEPARTMENT

PRELIMINARY REPORT

1. Complaint No. 10918-84	2. Mun. Code 1830	3. Phone No. 597-8581	4. UCR 2664	21. Prosecutor's Case Number			22. Department Case Number 10918-84		
5. Crime/Incident: Property Dispute		6. NJS		23. Victim/s/ Accused: State of New Jersey, D.O.T., Wes Bell Sign Co.			24. Age	25. Sex	26. Race
DATE AND TIME: 7. Between	8. Hour	9. Day	10. Mo.	11. Date	12. Yr.	27. Victim/s/ Home Address		Phone	
At X	11:00	Th	10	25	84				
13. Crime/Incident Location: area akjacent to Route 72 (South side), M.P.23.0				28. Employer			Phone		
14. Municipality: STAFFORD	15. County: OCEAN		16. Code 1830	29. Person Reporting Crime/Incident: Wes Bell			30. Date and Time: 10-25-84 11:00hrs		
17. Type of Premises: open country	18. Code 05	19. Weapons—Tools: N/A	20. Code	31. Address: Route 72, Manahawkin, NJ			Phone: 597-3222		
32. Radio Operator: N/A				32A. Portable Entry: N/A					
33. Vehicle	34. Year	35. Make	36. Body Type	37. Color	38. Registration Number and State		39. Serial Number or Identification		
VALUE STOLEN PROPERTY	40. Currency	41. Jewelry	42. Furs	43. Clothing	44. Auto	45.			
46. Total Value Stolen	47. Total Value Recovered	48. Teletype Alarm	49. Technical Services	50. Technician—Agency					
51.	52.	53.	54	55.		56.			
57.	58.	59.	60	61.		62			

List Accused – List and Identify Additional Victims – Describe Perpetrators or Suspects – Action Taken Include Findings and Observations of Investigator – Physical Evidence Found – Where By Whom – Disposition and Technical Services Performed – Interview of Victims – Witness – Persons Contacted – Accused Suspects – List – Describe Stolen Property – Value – Court Action – Attach Statements

63. Arrest Arrested	64. Adult	65. Juvenile	66. Status Crime	67. Status Case	68. UCR Status Month 10 Year 84	69. Date Cleared

Name | Address | 70. Age | 71. Sex | 72. Race | 73. DOB

On Thursday, October 25, 1984, the undersigned officer was dispatched by Chief Larry D. Parker to Route 72 approximate milepost 23.0. This location has been the point of a dispute over ownership of the land on which approximately 12 telephone poles are located. These poles are erected so as to form a large "V" pointing toward Route 72. At this time, there is no advertising on the poles.

Upon my arrival, I observed several dump trucks, a front end loader and a large crane. All of these vehicles were owned by the New Jersey Department of Transportation. There were approximately 20 Department of Transportation employees present under the supervision of Mr. Robert Micai, Supervisor of Outdoor Advertising, Roadside Use and Highway Marking. Accompanying the D.O.T. employees was Sgt. D. Scalley, New Jersey State Police, assigned to the Tuckerton Barracks. Also present was Stafford Township Administrator Fred Smith.

It appears that the D.O.T. employees had intentions of removing the sign poles. Mr. Bell objected to these intentions based on his contentions that he is the owner of the land on which the poles are situated.

Mr. Micai produced several documents establishing ownership of the land by the state of New Jersey. Mr. Bell also porpduced documents dating back to the early 1960's establishing him as the rightful owner of the land.

In reviewing the states documents, there arose some descrepencies as to the exact location of the land in question. Due to these descrepencies, all parties agreed to curtail the planned removal of the sign poles pending further court action and/or an updated land survey.

Signature of Complainant

75. Name	76. Badge Number	77.	78. Date Report	79. Reviewed By
Officer Raymond M. Bohn	#1	Page 1 of 1 Pages	10-31-84	RMB/nsj
Signature Officer Raymond M. Bohn		80.	81.	82.

STPD 001

431a
Stafford Township Police Report,
October 31, 1984

News Article with Photo, November 1, 1984

Page 1, Beacon, Thursday, November 1, 1984

Bell wins one in new billboard battle

Tract ownership is questioned and causes delay

By NEIL A. SHEEHAN
News Editor

MANAHAWKIN — It began almost the same way as a scene played out slightly more than a year ago but this time the results were different.

Early last Thursday morning, a state Department of Transportation work crew arrived at the site of a partially constructed billboard on Route 72 near the southbound exit to Route 9 and owned by former Stafford Township Mayor Wesley K. Bell.

Ordered by the state to remove pilings erected for the sign because they allegedly encroach on state property, the crew of about 15 brought with it a crane, several trucks and assorted equipment to perform the task. A State Police officer also accompanied the crew.

Bell, owner of the Wes Outdoor Advertising Co., arrived at the scene as the crew was about to begin work and convinced DOT supervisor John Nettleton and State Trooper David Scalley of the Tuckerton Barracks to wait until he could obtain proof that he owned the site and that the action was improper.

When Bell returned, he brought with him documents from his long-term legal battle with the state over the site. Bell argued that the order

Continued on page 6

Times-Beacon photo by Neil A. Sheehan

Former Stafford Mayor Wesley K. Bell, owner of Wes Outdoor Advertising, searches his records for deed to property on Route 72 to prevent state from removing billboard pilings, while State Police Sgt. David Scalley waits behind Bell.

Page 6, Beacon, Thursday, November 1, 1984

Billboard

Continued from page 1

the crew had to remove the sign was incorrect because the courts had not ruled on the property.

"You have no notice on this piece of property," Bell told the officials.

"This is what I agree with," Scalley responded, holding up the order.

"You're misintrepeting this," Bell challenged.

"This is my interpretation," Scalley said.

After examining more of Bell's papers and conferring with Nettleton, Scalley advised the crew to leave because it did not have enough proof to back up its order. He warned Bell, however, that the crew would return with a more specific order and someone familiar with the case.

"The issue is when we come back next time we're going to have the necessary paperwork to do the necessary work," Scalley said. "We'll also have someone who knows more about this case. As it stands right now, we don't have the order we need."

Township Administrator Fred Smith and Zoning Officer Martha Kreiner also were present at the site.

In September 1983, a DOT crew cut down a sign that stood on the site along with 17 others after a U.S. District Court judge ruled that the state had acted properly when it took over the properties in 1970 as part of a highway beautification program.

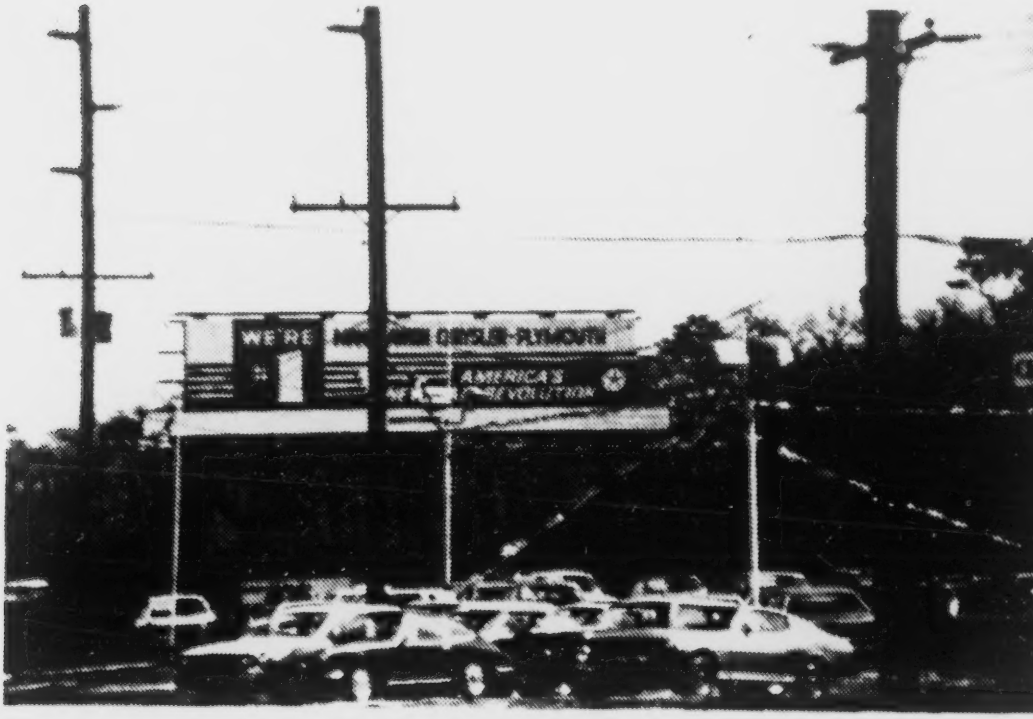
Bell, insisting that the site at Route 72 and the southbound exit to Route 9 was not included in the court's ruling, began rebuilding it last spring.

Township officials charged that the construction was illegal and took Bell to court to halt work on the sign. A Superior Court judge ruled that no signs could be placed on the pilings until the matter was resolved.

Photos of Destruction, September 30, 1983

The above photo shows State employees, in the midst of billboard destruction, with protection of Uniformed State Police, destroying billboards on private property, with no legal right of access, on September 30th, 1983, against Plaintiff's objections. These billboards *are licensed* by the State of New Jersey and are on Parcel #L22B, which was exempted from condemnation over twelve years ago, on June 15th, 1972; again on February 9th, 1973 and even further, on June 11th, 1974. (see pages 130a, 131a, 133a).

Photos of Destruction, September 30, 1983.



PARCEL #L2R-31D

The State of New Jersey withheld advertising permits for these handpainted billboards, claimed ownership and ordered Plaintiff-Appellant to remove these billboards or they would destroy them from 1968 to 1983. Plaintiff has produced evidence, beyond any doubt, before Judge Thompson, that the State had no legal right of entry, on this site.

Photos of Destruction, September 30, 1983.

BEFORE

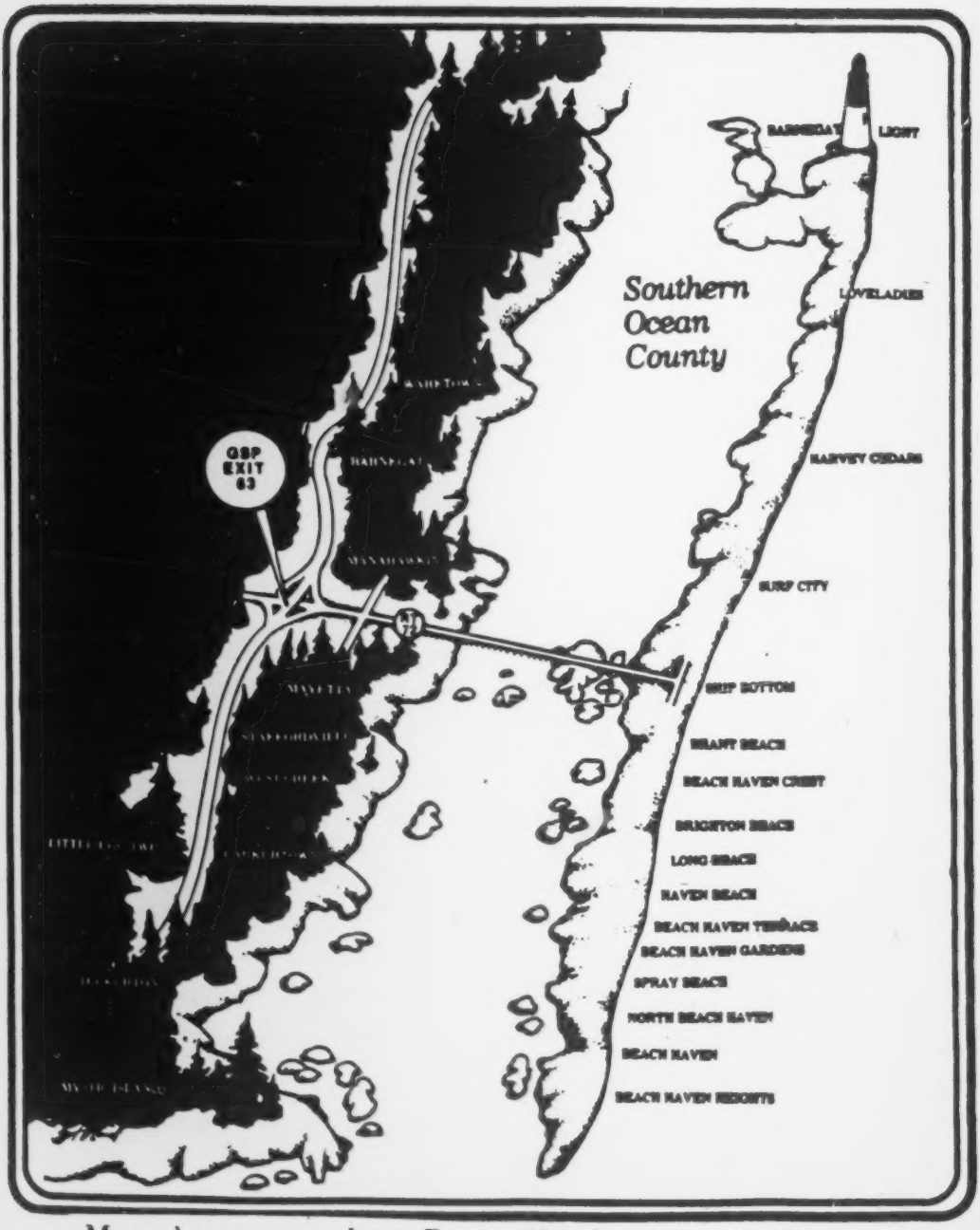
The above photo shows handpainted billboards, prior to State's demolition, on Parcel #L11B.

Photos of Destruction, September 30, 1983.

AFTER

The above photo shows billboards, after State destroyed them without notice, on September 30th, 1983, on Parcel #L11B.

Map of Southern Ocean County



Map shows area along Route #72, between the Garden State Parkway and Long Beach Island, where Plaintiff-Appellant derives 80% of his business income, on billboards located along this six mile stretch of a thriving, zoned business area. Route #72 is the only access road to Long Beach Island.

Letter, Re-Location Funds, November 4, 1970

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
Trenton, New Jersey 08625

John C. Kohl
Commissioner

November 4, 1970

In Reply To Route 72, Section 6
Wesley K. Bell and Wes Outdoor Advertising Co.

Mr. Wesley K. Bell
113 Longbeach Boulevard
Northbeach, New Jersey

Dear Mr. Bell:

A copy of Mr. Alfano's letter to you dated October 21, 1970 has been referred to this office to reply to your comments concerning relocation payments.

Our records indicate that you have been contacted personally on many occassions by Mr. Delaney and representatives of the freehold office concerning the billboards owned by you on the approval premises. I am sure Mr. Delaney has indicated that there is pending legislation concerning relocation payment for billboards, but to this date, we have no authority to proceed with same.

As soon as the appropriate authorization to make payment has been given, Mr. Delaney and/or his representatives will contact you.

Very truly yours,

LESTER G. FINCH
Supervisor—Area 2
Bureau of Property and Relocation

LGM:jl
s/

Letter Advising of Elimination, Parcel No. L-22B, June 15, 1972

Hartman, Schlesinger & Schlosser
Attorneys at Law

Daniel Lichtenthal
of Counsel

129 High Street
Mount Holly, New Jersey 08060

—

Francis J. Hartman
Jan M. Schlesinger
Marvin E. Schlosser
Alfred A. Faxon, III
Arnold Golden
Robert A. Porter

609-267-3050

—

131 Bridgeboro Street
Riverside, New Jersey 08075

—

609-461-0266

Please Reply To Mount Holly

June 15, 1972

Mr. Wesley K. Bell
P.O. Box 538
Manahawkin, New Jersey

Dear Wes:

I have been formally advised by a Mr. Schultz that they are eliminating the following parcels from their condemnation plans along Route #72. I understand this is generally in connection with the abandonment of the Beautification Easement. The parcels involved are Section 6, L-22b, 23b, 23c, 24b, 39 and 40.

I have been hearing very favorable comments about your performance as Mayor.

Best regards,

JAN
Jan M. Schlesinger

JMS:cmh

Letter Advising Parcel No. L-22B Has Been Deleted February 9, 1973

(Seal)

In Reply Please Refer To

Route 72, Stafford Township
Highway Beautification
Program

STATE OF NEW JERSEY

DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
Trenton, New Jersey 08625

John C. Kohl
Commissioner

February 9, 1973

Honorable Wesley K. Bell
Mayor, Stafford Township
Ocean County
775 East Bay Avenue
Manahawkin, New Jersey 08050

Dear Sir:

At our meeting on February 1, 1973, it was agreed that the Department would check on certain parcels where you indicated that changes in the L-Parcels had been made that did not appear on the maps used during the meeting.

There has been no change to Parcel L35D on Section 7 of Mill Creek Road.

Parcel L2R31D has not been increased from as 60' taking depth to a 100' depth.

Letter Advising Parcel No. L-22B Has Been Deleted, February 9, 1973.

On Section 6, along the ramp from Route 72 eastbound to Route 9 southbound, eight-tenths of an acre consisting of parcels L22B, L23B, L23C, L24B, L39 and L40 has been deleted.

At this meeting, you requested that the Department withdraw the Highway Beautification Program along Route 72. It has been determined that the Department will not withdraw this program. Acquisition of project right of way will continue as planned.

Yours very truly,

CLARENCE R. PELL
Clarence R. Pell
Chief, Bureau of Landscape

Letter Advising Order for Abandonment, Parcel L22B, June 11, 1974

(Seal)

STATE OF NEW JERSEY

DEPARTMENT OF LAW AND PUBLIC SAFETY
Division of Law
Transportation Section
1035 Parkway Avenue
Trenton 08625

William F. Hyland
Attorney General

Stephen Skillman
First Assistant
Attorney General

June 11, 1974

Honorable Edward V. Martino
Judge of the Superior Court
Burlington County Office Building
Mount Holly, New Jersey 08061

Re: State of New Jersey v. Wesley K. Bell, et al
Docket No. L-36137-72 (C-2643-73)

Dear Judge Martino:

The Order to Appoint Commissioners for the condemnation of parcels in the above mentioned matter was originally set down for Friday, June 14, 1974. At this time, the Department of Transportation is unable to finance the acquisition of these parcels. Pursuant to our telephone conversation on this date, I have contacted my adversary, and we will enter an Order for Abandonment. Hence, there will be no need for any appearance in Court on June 14, 1974.

Letter Advising Order for Abandonment, Parcel L22B, June 11, 1974.

Concerning the incidental matters that have arisen before Judge Wiley in Chancery, I will adjourn these matters also as there is a strong possibility of settlement.

Thank you for your cooperation in this matter.

Respectfully yours,

WILLIAM F. HYLAND
Attorney General of New Jersey
By: s/ _____
Fredric R. Cohen
Deputy Attorney General

FRC:lt
cc: Edward K. Burdge
Ocean Co. Clerk

William L. Gee, Esq.

Loss of Advertising, Parcel #L2R-31D

Subject: Loss of Advertising Revenue Because of State's Refusal to Consider for Issue Advertising Permits on Parcel L2R-31D.

September 1968—September 1969
Eastbound $1,400.00
Westbound $1,400.00
Total $ 2,800.00

September 1969—September 1970
Eastbound $1,500.00
Westbound $1,500.00
Total $ 3,000.00

September 1970—September 1971
Eastbound $1,800.00
Westbound $1,800.00
Total $ 3,600.00

September 1971—September 1972
Eastbound $2,600.00
Westbound $2,600.00
Total $ 5,200.00

September 1972—September 1973
Eastbound $3,000.00
Westbound $3,000.00
Total $ 6,000.00

September 1973—September 1974
Eastbound $3,000.00
Westbound $3,000.00
Total $ 6,000.00

September 1974—September 1975
Eastbound $3,500.00
Westbound $3,500.00
Total $ 7,000.00

Loss of Advertising. Parcel #L2R-31D.

September 1975—September 1976
Eastbound $3,500.00
Westbound $3,500.00
Total $ 7,000.00

September 1976—September 1977
Eastbound $3,600.00
Westbound $3,600.00
Total $ 7,200.00

September 1977—September 1978
Eastbound $4,200.00
Westbound $4,200.00
Total $ 8,400.00

September 1978—September 1979
Eastbound $4,300.00
Westbound $4,300.00
Total $ 8,600.00

September 1979—September 1980
Eastbound $4,500.00
Westbound $4,500.00
Total $ 9,000.00

September 1980—September 1981
Eastbound $5,000.00
Westbound $4,500.00
Total $ 9,500.00

Loss of Advertising. Parcel #L2R-31D.

September 1981—September 1982

Eastbound	$5,000.00	
	Total	$ 5,000.00

Eastbound sign finished
October 12, 1981
Westbound sign finished
August 1981

Total Loss of Income on this Parcel	$88,300.00
Interest to be added at a future date of Judgment when a Trial on the Merits is heard.	$_____

Public Law 91-646

ATTACHMENT #1—SECTION V

(Seal)

PUBLIC LAW 91-646
91st Congress, S. 1
January 2, 1971

AN ACT

84 STAT. 1894

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Uniform Relocation Assistance and Land Acquisition Policies Act of 1970.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

TITLE I—GENERAL PROVISIONS

Definitions.

Sec. 101. As used in this Act—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any

territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal Agency, or with Federal financial assistance; and solely for the purposes of sections 202(a) and (b) and 205 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purpose, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 202(a) of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display [2] or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

84 STAT. 1895

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

Effect Upon Property Acquisition

Sec. 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act.

TITLE II—UNIFORM RELOCATION ASSISTANCE

Declaration Of Policy

Sec. 201. The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

Moving And Related Expenses

Sec. 202. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this Act, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

[3] 84 STAT. 1896

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage,

and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

Replacement Housing For Homeowner

Sec. 203. (a)(1) In addition to payments otherwise authorized by this title, the head of the Federal agency shall make an additional payment not in excess of $15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to

accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of the amount of the principal of the mortage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder-term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area which the replacement dwelling is located.

[4] 84 STAT. 1897

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the placement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

Replacement Housing For Tenants And Certain Others

Sec. 204. In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000 or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 203(a)(1)(C)) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

Relocation Assistance Advisory Services

Sec. 205. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this section, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying

property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

84 STAT. 1898

[5]

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary

dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Housing Replacement By Federal Agency As Last Resort

Sec. 206. (a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that

such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 205(c)(3), is available to such person.

State Required To Furnish Real Property Incident To Federal Assistance (Local Cooperation)

Sec. 207. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the pro-

[6] 84 STAT. 1894

gram or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

State Acting As Agent For Federal Program

Sec. 208. Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project.

Public Works Programs And Projects Of The Government Of The District Of Columbia And Of The Washington Metropolitan Area Transit Authority

Sec. 209. Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act.

Requirements For Relocation Payments And Assistance Of Federally Assisted Program; Assurances Of Availability Of Housing

Sec. 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 203 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 205(c)(3).

[7] 84 STAT. 190

Federal Share Of Costs

Sec. 211. (a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, shall be included as part of the cost of a program or project for which

Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 206, 210, 215, and 305, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.

(b) No payment or assistance under section 210 or 305 shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective

date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305.

Administration—Relocation Assistance In Programs Receiving Federal Financial Assistance

Sec. 212. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

Regulations And Procedures

Sec. 213. (a) In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by [8] Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.

84 STAT. 1901

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this Act, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this Act, as he deems necessary or appropriate to carry out this Act.

Presidential report to Congress.

Annual Report

Sec. 214. The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this Act, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this Act assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants; (2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this Act, to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs (3) the views of the Federal agency head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) and indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations.

Planning And Other Preliminary Expenses For Additional Housing

Sec. 215. In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited

[9]

dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require

repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

Payments Not To Be Considered As Income

Sec. 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

68A Stat. 3.
25 USC 1 *et seq.*
49 Stat. 620.
42 USC 1305.

Displacement By Code Enforcement, Rehabilitation, And Demolition Programs Receiving Federal Assistance

Sec. 217. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance

63 Stat. 414;
68 Stat. 622.
42 USC 1450 *et seq.*
80 Stat. 1255.
42 USC 3301 note.

under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this title, be deemed to have been displaced as the result of the acquisition of real property.

Transfers Of Surplus Property

Sec. 218. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

63 Stat. 377.
40 USC 471 note.

[10]

84 STAT. 1903

Displacement By A Specific Program

Sec. 219. Notwithstanding any other provision of this title, a person—

(1) who moves or discontinues his business, moves other personal property, or moves from his dwelling on or after January 1, 1969, and before the 90th day after the date of enactment of this Act as the result of the contemplated

demolition of structures or the construction of improvements on real property acquired, in whole or in part, by a Federal agency within the area in New York, New York, bounded by Lexington and Third Avenues and 31st and 32d Streets; and

(2) who has lived on, or conducted a business on, such real property for at least one year prior to the date of enactment of this Act;

may be considered a displaced person for purposes of sections 202 (a) and (b), 204, and 205 of this title, by the head of the agency acquiring the real property if—

(A) the head of the agency determines that such person has suffered undue hardship as the result of displacement from the real property; and

(B) the Federal Government acquired and held such property for at least five years prior to the date of enactment of this Act.

Repeals

Sec. 220. (a) The following laws and parts of laws are hereby repealed:

(1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. 1231-1234). 72 Stat. 152.

(2) Paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473). 76 Stat. 384.

(3) Section 2680 of title 10, United States Code. 76 Stat. 511.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. 1606(b)). 78 Stat. 305.

(5) Section 114 of the Housing Act of 1949 (42 U.S.C. 1465). 78 Stat. 788.

(6) Paragraphs (7)(b)(iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415(8)), except the first sentence of paragraph (8). 78 Stat. 795.

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5-729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074). 79 Stat. 486.

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307). 80 Stat. 1259.

(10) Chapter 5 of title 23, United States Code. 82 Stat. 830.
23 USC 501.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90-495). 82 Stat. 835.

(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section. 23 USC 501 note. 510 note.

Effective Date

Sec. 221. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State.

TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

Uniform Policy On Real Property Acquisition Practices

Sec. 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat.

1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

84 STAT. 1905

[12] (5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No

Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

Buildings, Structures, And Improvements

Sec. 302. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

[13] 84 STAT. 1906

Expenses Incidental To Transfer Of Title To United States

Sec. 303. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

Litigation Expenses

Sec. 304. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General

62 Stat. 933; *Ante*, p. 449.
68 Stat. 1241.

effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

Requirements For Uniform Land Acquisition Policies; Payments Of Expenses Incidental To Transfer Of Real Property To State; Payment Of Litigation Expenses In Certain Cases

Sec. 305. Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

[14] 84 STAT. 1903

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

Repeals

Sec. 306. Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071-3073), section 35(a) of the Federal-Aid Highway Act of 1968 (23 U.S.C. 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section.

79 Stat. 485.
82 Stat. 836.
74 Stat. 502.

Approved January 2, 1971.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 91-1656
(Comm. on Public Works)

SENATE REPORT No. 91-488
(Comm. on Government Operations)

CONGRESSIONAL RECORD:
Vol. 115 (1969): Oct. 23, 27 considered and passed Senate.
Vol. 116 (1970): Dec. 7, considered and passed House, amended.
Dec. 17, Senate agreed to House amendments with amendments.
Dec. 18, House concurred in Senate amendments.

Relevant Portions of the United States Constitution

ARTICLE III

* * *

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Relevant Portions of the United States Constitution.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

* * *

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

* * *

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in

jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

* * *

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

New Jersey Department of Transportation

Form RE-7 6/72

CERTIFICATE OF POSSESSION – REMOVAL

PREPARE IN DUPLICATE. FORWARD WHITE & YELLOW COPIES TO NEW JERSEY DEPARTMENT OF TRANSPORTATION 1035 PARKWAY AVENUE, TRENTON, NEW JERSEY. ATTENTION: DIRECTOR, DIVISION OF RIGHT OF WAY.

DATE ISSUED	March 14, 1975

ROUTE	72	SECTION	7	PARCEL	12B32D

NAME OF OWNER	Kohl, Aekaway

Certification is herewith made of compliance by above named owner with all obligations under terms and conditions of agreement with State of New Jersey insofar as possession or removal of buildings and other structures from the premises described in said agreement is concerned.

ENTER DATES WHERE APPLICABLE

DATE

_____ Buildings and obstructions removed and replaced on remaining property and right of way cleared.

_____ Buildings remodeled and obstructions removed and right of way cleared.

_____ Buildings removed to another location.

_____ Buildings demolished.

3/14/75 Possession of Property accepted by State M.A. 1/29/75

(CHECK APPROPRIATE BOX)

☒ VACANT LAND IMPROVEMENTS

☐ VACATED

☐ SUBJECT TO STATE'S LEASE OCCUPANCY AGREEMENT (S)

RECORDED AND FORWARDED TO TITLE OFFICER

DATE _____

BY: _____

Peter Malecee

Name of person making certification

Peter Malecee

Asst. Dist. Prop. & Rele. Supervisor

Title

OWNERS NEW ADDRESS

_____

_____

Certificate of Possession—Removal

Judgment on Plaintiff's Motion for Partial Summary Judgment and Preliminary and Permanent Injunction

Lodged

Jul 21 1986
3:25
Clerk U.S. District Court
Central District of California
By _____ Deputy
Santa Ana California

Original Filed
Aug 11 1986
Clerk U.S. District Court
_____ Deputy

Entered
(Stamp Illegible)

Thomas R. Malcolm
Gary S. Mobley
Wyman, Bautzer, Rothman
Kuchel & Silbert
4100 MacArthur Boulevard
Newport Beach, California 92660
(714) 253-4700
Attorneys for Plaintiff

Judgment on Plaintiff's Motion for Partial Summary Judgment and Preliminary and Permanent Injunction.

UNITED STATES DISTRICT COURT
Central District of California

Case No. 85-4968 TJH (Kx)

NATIONAL ADVERTISING COMPANY,
a Delaware corporation,
Plaintiff,

vs.

THE CITY OF ORANGE,
a California municipal corporation,
Defendant.

Date: August 11, 1986
Time: 10:00 a.m.
Courtroom: The Honorable Terry J. Hatter, Jr.

JUDGMENT ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND PRELIMINARY AND PERMANENT INJUNCTION

Plaintiff's Motion for Partial Summary Judgment and/or for Specifications of Issues Without Substantial Controversy and for Preliminary and Permanent Injunction came on regularly for hearing before this Court on August 11, 1986, in the Courtroom of the Honorable Terry J. Hatter, Jr., Judge of the above-entitled Court. Gary S. Mobley of Wyman, Bautzer, Rothman, Kuchel & Silbert appeared as attorneys for

plaintiff NATIONAL ADVERTISING COMPANY: Bradley C. Withers of Cotkin, Collins, Kolt & Franscell appeared as attorneys for defendant THE CITY OF ORANGE.

Having reviewed the evidence and considered the oral and written argument of the parties, having determined that there are no material facts in substantial controversy on any issue in this case except the extent of damages and that plaintiff is entitled to judgment as a matter of law, and having further determined that, unless defendant is restrained, plaintiff will suffer irreparable injury and that there is no good cause why a preliminary and permanent injunction should not be issued in this action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court declares and decrees that defendant CITY OF ORANGE's Sign Ordinance, Section 17.78 of the Orange Municipal Code, is void and unconstitutional on its face and as applied to plaintiff because it violates rights secured under the First, Fifth and Fourteenth Amendment to the United States Constitution and Article I, Sections 2 and 7 of the California Constitution and that plaintiff is entitled to permits to erect off-premises signs at the locations identified in Exhibit 2-1;

2. Plaintiff is awarded judgment of damages for violation of civil rights as follows:

(a) For damages in principal sum of $ _____;

(b) Pre-judgment interest from and after July 24, 1985 until the date of entry of this judgment in the amount of $ _____;

(c) For costs in the amount of $ _____;

(d) Reasonable attorneys' fees under 42 U.S.C. §1988 as the prevailing party in the amount of $ __; and

(e) Post-judgment interest on the total judgment from and after the date of entry hereof as provided by law; and

3. A preliminary and/or permanent injunction is hereby issued in favor of plaintiff restraining defendant, and its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, from enforcing the provisions of Section 17.78.080 of the CITY OF ORANGE's Sign Ordinance, refusing to issue plaintiff building permits to construct off-premises signs at the locations identified in Exhibit 2-1 or from otherwise interfering with or preventing plaintiff from erecting and maintaining off-premises signs or billboards inside the City limits and within areas zoned for industrial or commercial use which otherwise conform with city, county and state zoning laws.

Dated: 8/11, 1986

TERRY J. HATTER, JR.,
Terry J. Hatter, Jr., *Judge*
United States District Court

Judgment on Plaintiff's Motion for Partial Summary Judgment and Preliminary and Permanent Injunction.

Submitted by:

WYMAN, BAUTZER, ROTHMAN,
KUCHEL & SILBERT
THOMAS R. MALCOLM
GARY S. MOBLEY

By: GARY S. MOBLEY
Gary S. Mobley
Attorneys for Plaintiff
National Advertising Company

10GSM18

Findings of Fact and Conclusions of Law

Received
Aug 22 1986
Ans'd (Illegible)

Filed
Aug 20 1986
Clerk, U.S. District Court
Central District of California
By_____ Clerk

UNITED STATES DISTRICT COURT
Central District of California

CV 85-496 8:TJH(Kx)

NATIONAL ADVERTISING COMPANY,
A Delaware corporation,
Plaintiff,

vs.

THE CITY OF ORANGE,
A California municipal corporation,
Defendant.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The Court, having considered the plaintiff's motion for partial summary judgment,

it is ORDERED that the motion, excluding damages, is granted.

FINDINGS OF FACT

1. Plaintiff, NATIONAL ADVERTISING COMPANY ("National"), is a Delaware corporation with its executive offices and principal place of business in Bedford Park, Illinois.

Findings of Fact and Conclusions of Law.

2. Defendant, CITY OF ORANGE ("Orange"), is a municipal corporation organized and existing under the laws of the State of California and located in the County of Orange, State of California.

3. National is engaged in the business of leasing outdoor advertising sign space to the public throughout the United States, including the Southern California area. These signs are generally located on property leased by National for the purpose of erecting the signs. The sign space is leased to the public on an "all-comers" basis in a fashion similar to newspaper and broadcast advertising. The content of these signs changes periodically.

4. Outdoor advertising signs such as National's are a means of communication and a forum for the expression of ideas.

5. National's signs are classified as "offsite" signs because they typically advertise goods, services or a business not available on the premises where the signs are located.

6. In contrast, "onsite" signs typically advertise goods, services or a business available on the premises where the signs are located.

7. Offsite or outdoor advertising signs differ from onsite signs in that:

(a) Outdoor advertising signs are generally leased to the public and made available to national and local advertisers on an "all-comers" basis whereas onsite signs are almost exclusively used for permanent messages;

(b) Outdoor advertising signs are a means of communication and media for the expression of ideas by the public, whereas onsite signs generally are not available to the public.

8. Only approximately 9.5% of Orange is zoned industrial or commercial; the rest is zoned residential, agriculture, open space or for other purposes.

9. Orange currently has in effect, as Chapter 17.78 of the Orange Municipal Code, a Sign Ordinance.

10. As written, the Sign Ordinance prohibits in all areas of Orange, even in the commercial and industrial areas, all offsite signs and billboards. This prohibition applies irrespective of whether the offsite signs and billboards carry commercial or noncommercial messages, or a combination of both.

11. The Sign Ordinance exempts onsite signs, which are permitted in industrial and commercial districts of Orange, from this blanket prohibition.

12. The Sign Ordinance, also, exempts offiste signs of certain specified categories, which are identified in Section 17.78.050 of the Sign Ordinance, from this blanket prohibition. These exemptions include temporary political signs, government signs, memorial tablets, flags and real estate pennants used for open-house activity.

13. The Sign Ordinance's general prohibition of offsite signs and billboards precludes various users, with both commercial and noncommercial messages, from having access to sign displays within Orange.

14. By permitting onsite commercial signs and generally prohibiting noncommercial signs, the Sign Ordinance, Section 17.78.030 F, prefers commercial over noncommercial speech.

15. By permitting exceptions to the general prohibition of offsite signs under Section 17.78.050, the Sign Ordinance regulates speech based on its content.

16. The Sign Ordinance effectively constitutes a total ban on the public use of billboards as an effective medium of communication in Orange.

17. Prior to July 24, 1985, National entered into separate leases with eleven (11) owners of properties located in industrial or commercial areas of Orange to erect and maintain outdoor advertising sign displays on these properties.

18. On July 24, 1985, National applied to Orange for permits to erect and maintain offsite signs on the eleven (11) leased properties.

19. On July 24, 1985, National's permit applications were denied by Orange. This denial was based, solely, on Section 17.78.080 A of the Sign Ordinance, which prohibits offsite signs.

20. National has exhausted all administrative remedies, with respect to the denial of these permit applications, pursuant to Section 17.78.080 A only; these denials have become a final order of Orange.

21. National has been prevented from erecting and maintaining eleven (11) offsite billboard structures in Orange, solely, because of Section 17.78.080 A of the Sign Ordinance, which prohibits offsite signs.

22. In so acting, Orange has acted under color of statute, ordinance, regulation and policy of Orange.

23. Orange is likely to continue to enforce the provisions of the Sign Ordinance prohibiting offsite signs unless restrained.

24. So long as portions of the Sign Ordinance, i.e., Sections 17.78.030 F, 17.78.050 A-K, and 17.78.080 A, are enforced, National will suffer irreparable injury.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action on the basis of existence of a federal question and alleged deprivation of civil rights pursuant to 28 U.S.C. Sections 1331 and 1343(a)(3). This action arises under 42 U.S.C. Sections 1331 and 1343(a)(3). This action arises under 42 U.S.C. Section 1983 and the Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202.

2. The Sign Ordinance imposes a near total prohibition on the public use of outdoor advertising displays for noncommercial messages within Orange. *Metromedia, Inc. v. San Diego,* 453 U.S. 490, 513, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981).

4. Since Section 17.78.050 of the Sign Ordinance exempts certain signs based on cotent from the blanket prohibition on offsite signs, the effect of the Sign Ordinance is to regulate speech based on its content.

5. The Sign Ordinance is unconstitutional on its face and invalid under the First, Fifth and Fourteenth Amendments of the United States Constitution.

6. The Sign Ordinance is unconstitutional on its face and invalid under Article I, Sections 2 and 7 of the California Constitution.

7. Sections 17.78.030 F, 17.78.050 A-K, and 17.78.080 A, of the Sign Ordinance, are facially unconstitutional under both the United States and California Constitutions.

8. In denying National's permit applications, Orange has deprived National of rights, privileges and immunities secured by the Constitution of the United States.

9. National is entitled to declaratory relief declaring that Sections 17.78.030 F, 17.78.050 A-K, and 17.78.080 A, of the Sign Ordinance, are facially unconstitutional.

10. National is entitled to a permanent injunction restraining Orange from enforcing the portions of its Sign Ordinance which are unconstitutional.

Dated: August 15, 1986

TERRY J. HATTER, JR.
Terry J. Hatter, Jr.
United States District Judge

Order

Filed
Oct 9 1986
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

No. 86-6440

DC# CV-85-4968-TJH
Central California

NATIONAL ADVERTISING COMPANY,
Plaintiff-Appellee,

vs.

THE CITY OF ORANGE,
Defendant-Appellant.

ORDER

Before: HUG, POOLE and NORRIS,
Circuit Judges

Defendant filed its notice of appeal prior to the entry of an order disposing of its timely motion to alter or amend judgment. The appeal is dismissed for lack of jurisdiction. Fed. R. App. P. 4(a)(4); *Acosta v. Louisiana Dept. of Health and Human Resources*, _____ U.S. _____, 54 U.S.L.W. 3856 (S. Ct. June 30, 1986) (per curiam).

Although we must deny defendant's motion for a stay pending appeal as moot in view of the above determination, review of the record indicates that the trial court may not yet have entered an order denying defendant's motion to alter or amend the judgment. Should this be the fact, defendant may wish to apply to the district court for entry of its order. If a timely appeal is then taken, it will be entertained by this court.

MoCal 10/6/86

Amended Proposed Judgment of Contempt

City of Orange
Mar 31 1987
City Attorney

Lodged
Mar ____ 3:47 PM '87
Clerk U.S. District Court
Central Dist. of Calif.
Los Angeles

Filed
Mar 27 1987
Clerk U. S. District Court
Central District of California
By _____Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 85 4968 TJH (Kx)

NATIONAL ADVERTISING COMPANY,
Plaintiff,

vs.

THE CITY OF ORANGE, etc.,
Defendant.

AMENDED PROPOSED JUDGMENT
OF CONTEMPT

This cause came on regularly for hearing before this Court on March 16, 1987, in the Courtroom of the Honorable Terry J. Hatter, Jr., Judge of the above-entitled Court. Gary S. Mobley of Case, Schroeder, Knowlson, Mobley & Burnett appeared as attorneys for plaintiff NATIONAL ADVERTISING COMPANY;

Bradley C. Withers of Cotkin, Collins, & Franscell and Furman Roberts, City Attorney, City of Orange, appeared as attorneys for defendant CITY OF ORANGE ("City") and the individual members of defendant's Design Review Board, RICHARD BLOMGREN, CHARLES SANDBERG, ERICA WOLFE, BEAU SHIGETOMI and ROBERT HORNACEK ("Design Review Board Members").

Having considered the motion, the evidence, and oral and written argument of the parties and having determined that the City and the Design Review Board Members have knowingly, intentionally and wilfully violated the previous orders of this Court,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The CITY and the Design Review Board Members are hereby found and determined to be in contempt of this Court for having failed and refused to obey this Court's Permanent Injunction entered August 13, 1986 and this Court's Order on Defendant's Motion to Alter or Amend, etc., entered September 29, 1986 (and amended October 16, 1986).

2. Defendant CITY and the Design Review Board Members shall are ordered to purge themselves of this contempt by taking the following action:

a. Fully complying with all provisions of the Court's previous injunctions, orders, and decrees entered in this action;

b. Issuing to plaintiff permits to erect the off-premise signs which are the subject of this action and immediately ceasing and desisting from any

further interference with plaintiff's exercise of its First Amendment right to erect their off-premises signs which are the subject of this action.

3. Defendant CITY shall pay to the Court forthwith a fine in the sum of $10,000 plus an additional fine of $1,000 per day until defendant CITY purges itself of this contempt and issues to plaintiff the permits to erect the off-premises signs which are the subject of this action. Said additional fine shall be stayed for 10 days from the date of this order.

4. Defendant CITY shall pay to plaintiff costs, including reasonable attorneys' fees, in connection with these contempt proceedings in the amount of _____.

5. Attorneys' fees are ordered in the amount of $5,000.

Dated: 3/27, 1987

TERRY J. HATTER, JR.
Judge, United States District Court

SUBMITTED BY:

CASE, SCHROEDER, KNOWLSON,
MOBLEY & BURNETT
GARY S. MOBLEY

By: GARY S. MOBLEY
Gary S. Mobley
Attorneys for Plaintiff

Order

Filed
Apr 2 1987
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

Nos. 86-6552
87-5739

DC# CV-85-4968
Central California

NATIONAL ADVERTISING COMPANY,
Plaintiff-Appellee,

vs.

CITY OF ORANGE,
Defendant-Appellant.

ORDER

Before: WALLACE and ALARCON, *Circuit Judges*

Appellant's emergency motion for a stay of the district court's order of contempt, dated March 27, 1987, is granted in part. Section 2(b) of the district court order is stayed pending the outcome of this appeal insofar as it orders the city to purge itself from the finding of contempt by "immediately ceasing and resisting from any further interference with plaintiff's exercise of its First Amendment right to erect their off-premises signs

which are the subject of this action." In all other respects, the district court order of March 27, 1987 shall remain in effect.

These appeals are consolidated and released from the rebriefing conference program. No civil appeals docketing statements need be filed.

Although the parties have failed to file with the district court their designations of reporter's transcript on appeal, the transcripts have been completed and filed. The district court clerk is requested to forward the certificate of record as soon as practicable.

Appellant shall file its opening brief within 21 days of entry of this order. Appellee shall file its brief within 21 days of service of appellant's brief. Appellant may file a reply brief within 7 days of service of appellee's brief.

The Clerk will calendar these appeals for argument in Pasadena in July.